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U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Attorneys for Defendant  
INFOSYS TECHNOLOGIES, LTD., MAHESH  
PRAKASH KINHIKAR AND PRASITA KUTTY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

C10-00783

JCS

PROMILA AWASTHI,

Case No. RG09486022

Plaintiff,

**NOTICE OF REMOVAL BY  
DEFENDANTS INFOSYS  
TECHNOLOGIES, LTD., MAHESH  
PRAKASH KINHIKAR AND PRASITA  
KUTTY PURSUANT TO 28 U.S.C. §§ 1332,  
1441, AND 1446 (DIVERSITY)**

v.

INFOSYS TECHNOLOGIES, LTD., a  
foreign corporation; MAHESH PRAKASH  
KINHIKAR; ANMOL SRIVASTAVA;  
PRASITA KUTTY; and DOES 1-20,

First Amended Complaint Filed: Dec. 24, 2009

Defendants.

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

2 PLEASE TAKE NOTICE that Defendants Infosys Technologies, Ltd., Mahesh Prakash  
3 Kinhikar, and Prasita Kutty ("Defendants") hereby remove the above-entitled action, Case No.  
4 RG09486022, from the Superior Court of the State of California, County of Alameda, to the United  
5 States District Court for the Northern District of California.

6 This notice is based on U.S.C. sections 1332, 1441, and 1446.

7 Defendants make the following allegations in support of their Notice of Removal:

8 **I. GENERAL INFORMATION**

9 1. On November, 2009, an action entitled *Awasthi v. Infosys Technologies, Ltd., et al.*,  
10 was filed in the Superior Court of the State of California, County of Alameda, Case No. RG0986022  
11 (hereinafter the "Complaint"). In the Complaint, Plaintiff asserted five causes of action: (1) National  
12 Origin/Ancestry, Gender, Age, and Religious Discrimination in violation of the California Fair  
13 Employment and Housing Act; (2) Failure to Pay Overtime; (3) Constructive Discharge; (4)  
14 Intentional Discrimination of Emotional Distress; and (5) Breach of the Implied Covenant of Good  
15 Faith and Fair Dealing. A true and correct copy of the Summons and Complaint from the Superior  
16 Court of the State of California, County of Alameda is attached hereto as **Exhibit A**.

17 2. On December 24, 2009, before any Defendants had appeared in the matter, Plaintiff  
18 filed her First Amended Complaint. Plaintiff's First Amended Complaint added a Defendant, Prasita  
19 Kutty, and added a cause of action. In the First Amended Complaint, Plaintiff asserts six causes of  
20 action: (1) National Origin/Ancestry, Gender, Age, and Religious Discrimination in violation of the  
21 California Fair Employment and Housing Act; (2) Failure to Pay Overtime; (3) Constructive  
22 Discharge; (4) Intentional Discrimination of Emotional Distress; (5) Breach of the Implied Covenant  
23 of Good Faith and Fair Dealing; and (6) a claim for Waiting Time Penalties under the California  
24 Labor Code. A true and correct copy of the Summons and Complaint from the Superior Court of the  
25 State of California, County of Alameda is attached hereto as **Exhibit B**.

26 3. Defendant Infosys Technologies, Ltd was served with the First Amended Complaint on  
27 January 8, 2010, via personal service.

4. Defendant Mahesh Prakash Kinhikar was served with the First Amended Complaint on January 8, 2010, via personal service.

5. Defendant Prasita Kutty was served with the First Amended Complaint on January 5, 2010, via personal service.

6. Defendant Anmol Srivastava has not been served with the First Amended Complaint.

7. Defendants Infosys Technologies, Limited, Mahesh Prakash Kinhikar and Prasita Kutty filed a General Denial and Affirmative Defenses to Plaintiff's First Amended Complaint with the Alameda County Superior Court on February 19, 2010. A copy of Defendants' General Denial and Affirmative Defenses is attached hereto as **Exhibit C**. This document, together with Exhibits A and B, represents the entire state court file in this matter.

8. Pursuant to 28 U.S.C. section 1446(b), this Notice to Federal Court of Removal of Civil Action is timely in that it is filed within thirty days of February 11, 2010, the date Defendants became aware that the action was removable. Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344 (1999); Brown v. Demco, Inc., 792 F.2d 478 (5th Cir. 1986); McAnally Enterprises, Inc. v. McAnally, 107 F. Supp. 2d 1223, 1229 (C.D. Cal. 2000).

9. Intradistrict Assignment. All civil actions arising in the counties of Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, San Francisco, San Mateo, or Sonoma shall be assigned to the San Francisco Division or the Oakland Division. See L.R. 3-2(e). Plaintiff filed this case in Alameda County, thus assignment in either the San Francisco or Oakland Division is appropriate.

## II. DIVERSITY JURISDICTION EXISTS

10. This Court has original jurisdiction over this lawsuit under 28 U.S.C. § 1332 and this diversity action may be removed to this Court under 18 U.S.C. §§ 1441 and 1446. "Any civil action brought in a State court which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the place where such action is pending." 28 U.S.C. § 1441(a). The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States (or countries). 28 U.S.C. § 1332(a)(2).



1           **A.     Action Between Citizens of Different States**

2           11. Plaintiff alleges that Plaintiff Promila Awasthi was at the time of commencing this  
3 action, and still is, a citizen of the United States. (First Amended Complaint, "FAC," ¶1.)

4           12. When establishing citizenship for diversity purposes, the citizenship, not domicile, of a  
5 natural person is controlling. *Kantor v. Wellesley Galleries, Ltd.* (9th Cir. 1983) 704 F.2d 1088,  
6 1090; *Coury v. Prot* (5th Cir. 1996) 85 F.3d 244, 249-250.

7           13. Defendant Mahesh Prakash Kinhikar is a citizen of India.

8           14. Defendant Anmol Srivastava is a citizen of India.

9           15. Defendant Prasita Kutty is a citizen of India.

10          16. For diversity jurisdiction purposes, a corporation is deemed a citizen of its state of  
11 incorporation and the state where it has its principal place of business. 28 U.S.C. §1332(c)(1).  
12 Courts generally use one of two tests to determine where a corporation has its principal place of  
13 business. Tosco Corp. v. Communities for a Better Environment, 236 F.3d 495, 500 (9<sup>th</sup> Cir. 2001);  
14 Brietman v. May Co. California, 37 F.3d 562, 564 (9<sup>th</sup> Cir. 1994). The "place of operations" test  
15 "locates a corporation's principal place of business in the state which 'contains a substantial  
16 predominance of corporate operations.'" Tosco Corp., 236 F.3d at 500 (*citation omitted*); *see also*  
17 Brietman, 37 F.3d at 564. The "nerve center" test "locates a corporation's principal place of  
18 business in the state where the majority of its executive and administrative functions take place."  
19 Tosco Corp., 236 F.3d at 500; *see also* Brietman, 37 F.3d at 564. Notably, the "nerve center" test is  
20 used when no state contains a substantial predominance of the corporation's business activities. Id.

21          17. At the time this action was commenced in state court, Defendant Infosys was, and still  
22 is, a corporation organized under the laws of the country of India and maintaining its principal place  
23 of business in the country of India. Thus, for purposes of determining diversity jurisdiction,  
24 Defendant Infosys is not a citizen of the United States. 28 U.S.C. § 1332 (c)(1).

25          a. The country of India comprises the majority of Defendant Infosys' executive and  
26 administrative functions. Infosys employees and customers are located in several states throughout  
27 the United States and countries other than the United States, without a substantial predominance of  
28 employees and customers in the United States. Infosys' revenue originates from several states

1 throughout the United States and countries other than the United States, without a substantially  
 2 predominant amount of revenue from the United States. Infosys is a corporation created under the  
 3 laws of a foreign state and therefore is deemed a citizen or subject of the foreign state. *See JP*  
 4 *Morgan Chase Bank v. Traffic Stream (BVI) Infrastructure Ltd.*, 536 U.S. 88, 92, 122 S. Ct. 2054,  
 5 2057 (2002) (corporation chartered in British territory subject to foreign state for purposes of  
 6 alienage diversity jurisdiction); *Nike, Inc. v. Comercial Iberica de Exclusivas Deportivas, S.A.*, 20  
 7 F.3d 987, 990 (9<sup>th</sup> Cir. 1994).

8           b. Under the “nerve center” test, Infosys’ principal place of business would be in  
 9 India, since the company has operations in many states and countries, and the United States does not  
 10 contain a substantial predominance of the corporation’s activities. Indeed, even under the “place of  
 11 operations” test, India would remain Infosys’ principal place of business, given that there is a  
 12 plurality of employees in states and countries other than the United States. As such, Defendant  
 13 Infosys Technologies, Ltd. is not a citizen of the State where this action was brought, and thus  
 14 complete diversity exists between Plaintiff and Defendants. 28 U.S.C. § 1441(b).

15           18. Defendants designated as Does 1-20 are fictitious defendants, are not parties to this  
 16 action, have not been named or served, and are to be disregarded for the purpose of this removal. 28  
 17 U.S.C. § 1441(a); *McCabe v. General Foods Corp.*, 811 F.2d 1336, 1339 (9th Cir. 1987). The Doe  
 18 defendants, therefore, need not consent to this removal.

19           19. Defendant Anmol Srivastava has not yet been served, and therefore may be  
 20 disregarded for purposes of this removal. Should Defendant Anmol Srivastava be properly served in  
 21 this action, he shall have an additional 30 days to join this removal notice. *McKinney v. Board of*  
 22 *Trustees of Maryland Comm. College* (4th Cir. 1992) 955 F.2d 924, 927. Defendant Anmol  
 23 Srivastava, therefore, need not consent to this removal.

24           20. This civil action, therefore, has complete diversity as it is an action between citizens of  
 25 different States since Plaintiff is a citizen of the United States, and Defendants are citizens of India.

26           **B. Amount In Controversy**

27           21. The amount in controversy in this case exceeds \$75,000, excluding interest and costs.  
 28 A defendant can establish the amount in controversy by the allegations in a complaint, or by setting

1 forth facts in the notice of removal that demonstrate that the amount in controversy "more likely than  
 2 not" exceeds \$75,000. Sanchez v. Monumental Life Ins. Co., 102 F.3d 398, 404 (9th Cir. 1996);  
 3 Guas v. Miles, Inc., 980 F. 2d 564, 576 (9th Cir. 1992). The District Court may consider whether it  
 4 is facially apparent from the Complaint that the jurisdictional amount is met. Singer v. State Farm  
 5 Mutual Auto Ins. Co., 116 F.3d 373, 377 (9th Cir. 1997); Conrad Assoc. v. Hartford Accident &  
 6 Indemnity Co., 994 F. Supp. 1196, 1198 (N.D. Cal. 1998).


7 22. As evidenced by Plaintiff's prayer for relief, Plaintiff seeks to recover damages of at  
 8 least \$21,384. (FAC ¶33) In addition, on February 1, 2010, Plaintiff served a Statement of Damages  
 9 indicating that she had suffered pain, suffering, and inconvenience; emotional distress; medical  
 10 expenses; lost earnings; and waiting time penalties, in addition to the \$21,384 in overtime damages.  
 11 A true and correct copy of the Statement of Damages is attached hereto as **Exhibit D**.

12 23. On February 11, 2010, Plaintiff agreed to stipulate that she claims damages  
 13 *significantly in excess of \$75,000*. A true and correct copy of an email from Stephen Tidwick, dated  
 14 February 11, 2010, is attached hereto as **Exhibit E**. As such, the amount in controversy for  
 15 Plaintiff's claims easily meets the \$75,000 jurisdiction requirement, and removing Defendants were  
 16 aware of this amount as of February 11, 2009.

### 17 III. CONCLUSION

18 WHEREFORE, Defendants Infosys Technologies, Ltd., Mahesh Prakash Kinhikar, and  
 19 Prasita Kutty remove the action now pending against it in the Superior Court of the State of  
 20 California, County of Alameda, to this Honorable Court, and request that this Court retain  
 21 jurisdiction for all further proceedings.

22 Dated: February 24, 2010

23  
 24   
 25 MICHELLE B. HEVERLY  
 26 BLAIRE A. CLEVELAND  
 27 LITTLER MENDELSON  
 28 A Professional Corporation  
 Attorneys for Defendant  
 INFOSYS TECHNOLOGIES, LTD.,  
 MAHESH PRAKASH KINHIKAR, AND  
 PRASITA KUTTY

## Exhibit A



NOV-30-2009 06:38

P.01/21

To: Page 25 of 25

2009-11-23 17:16:08 (GMT)

THE TIDRICK LAW FIRM From: THE TIDRICK LAW FIRM

# SUMMONS (CITACION JUDICIAL)

## NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

INFOSYS TECHNOLOGIES LIMITED, a foreign corporation;  
MAHESH PRAKASH KINHIKAR; ANMOL SRIVASTAVA;  
and DOES 1-20

## YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

Promila Awasthi

SUM-100

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

FILED BY FAX  
ALAMEDA COUNTY

November 23, 2009

CLERK OF  
THE SUPERIOR COURT  
By Denise Dalton, Deputy

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tienes 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto al darse que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de solicitud de pago de costas. Si no presenta su respuesta a tiempo, puede perder el caso por incomparecencia y la corte le podrá quitar su salario, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of the State of California, County of Alameda  
René C. Davidson Alameda County Courthouse  
1225 Fallon St., Oakland, CA, 94612

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Steven G. Tidrick, Esq., The Tidrick Law Firm  
6114 La Salle Avenue #500, Oakland, California 94611, (510) 381-3832

CASE NUMBER 486022

DATE:

(Fecha)

Clerk, by —

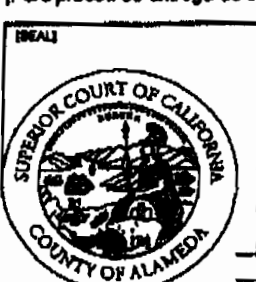
(Secretario) Denise A. Dalton

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons. (POS-010)).



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Judicial Council of California  
SUM-100 (Rev. January 1, 2009)

## NOTICE TO THE PERSON SERVED: You are served

1. ☒ as an individual defendant.  
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 415.10 (corporation) ☐ CCP 415.60 (minor)  
☐ CCP 415.20 (defunct corporation) ☐ CCP 415.70 (conservatee)  
☐ CCP 415.40 (association or partnership) ☐ CCP 415.90 (authorized person)

- ☐ other (specify):

4. ☐ by personal delivery on (date):

SUMMONS

Page 1 of 1

Code of Civil Procedure §§ 415.20, 485

(Amended January 1, 2009)



**FILED BY FAX**  
ALAMEDA COUNTY

November 23, 2009

CLERK OF  
THE SUPERIOR COURT  
By Denise Dalton, Deputy

CASE NUMBER:  
**RG09486022**

1 **STEVEN G. TIDRICK, SBN 224760**  
2 **THE TIDRICK LAW FIRM**  
3 **6114 La Salle Avenue #500**  
4 **Oakland, California 94611**  
5 **Telephone: (510) 381-3832**  
6 **Facsimile: (510) 291-3226**  
7 **E-mail: sgt@tidricklaw.com**

8 **Attorney for Plaintiff**  
9 **PROMILA AWASTHI**

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **COUNTY OF ALAMEDA**  
12 **UNLIMITED JURISDICTION**

13 **PROMILA AWASTHI,**

14 **Plaintiff,**

15 **v.**

16 **INFOSYS TECHNOLOGIES LIMITED,**  
17 **a foreign corporation; MAHESH PRAKASH**  
18 **KINHIKAR; ANMOL SRIVASTAVA;**  
19 **and DOES 1-20,**

20 **Defendants.**

Civil Case Number: \_\_\_\_\_

**COMPLAINT FOR:**

- (1) HARASSMENT IN VIOLATION OF FEHA;
- (2) FAILURE TO PAY OVERTIME;
- (3) CONSTRUCTIVE DISCHARGE IN VIOLATION OF FEHA;
- (4) INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS;
- (5) BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

**JURY TRIAL DEMANDED**

21 **Plaintiff asserts this Complaint against Defendants and alleges as follows:**

22 **NATURE OF THE ACTION**

23 1. As detailed in this Complaint, Promila Awasthi ("Plaintiff"), a United States  
24 citizen originally from India and of Indian ancestry, age 48, was employed at the Fremont,  
25 California office of Defendant Infosys Technologies Limited ("Infosys"), a foreign  
26 corporation headquartered in Bangalore, India, with about 105,000 employees worldwide.  
27 She performed computer work for Infosys consisting of data warehousing tasks. In addition  
28 to working regular daytime hours, she was regularly on call for several hours at night to

1 answer phone calls from India, even past midnight, as well as on weekends, but was not paid  
2 overtime as required by California law. While working at Infosys, she was routinely harassed  
3 by Infosys management, nationals of India, on the basis of her being an American of Indian  
4 ancestry and national origin, and on the basis of her age and gender. Infosys management  
5 routinely disparaged Americans, including Plaintiff, as not having "family values," and stated  
6 that layoffs in America are good because the jobs will be outsourced. Infosys management  
7 ridiculed Plaintiff for celebrating the American holiday of Thanksgiving, telling her that she  
8 should not celebrate Thanksgiving because she is Indian, and that therefore she must work on  
9 Thanksgiving Day. Infosys management also ridiculed Plaintiff for celebrating Christmas,  
10 saying that "we" do not celebrate Christmas, and that she should not celebrate Christmas.  
11 Infosys management also ridiculed Plaintiff's children for celebrating Thanksgiving, and  
12 called them "ABCD," short for "American-Born Confused Desi," and "IBCD," short for  
13 "Indian-Born Confused Desi," insulting terms used to criticize people of Indian ancestry who  
14 are Americanized. Infosys management repeatedly discussed the quality of Plaintiff's work  
15 by explicitly commenting on their expectations for "a woman your age." The working  
16 conditions were so intolerable that Plaintiff was eventually forced to quit. Plaintiff sues  
17 Infosys under the California Fair Employment and Housing Act, California Government Code  
18 §§ 12900 *et seq.* ("FEHA"), the California Labor Code, and the common law, seeking  
19 monetary damages, including punitive damages, and attorneys fees and costs.

#### 20 THE PARTIES

21 2. Plaintiff Promila Awasthi ("Plaintiff") is an individual and a resident of the  
22 County of Santa Clara, State of California.

23 3. Defendant Infosys Technologies Limited is, and at all times mentioned was, a  
24 foreign corporation having a place of business in Alameda County, California, at 6607 Kaiser  
25 Drive, Fremont. Headquartered in Bangalore, India (a city known as the "Silicon Valley of  
26 India"), Infosys describes itself as a company that "delivers technology-enabled business  
27 solutions that help Global 2000 companies win in a Flat World." Infosys advertises itself as a  
28 "global leader in the 'next generation' of IT and consulting." Infosys touts that it "pioneered

1 the Global Delivery Model" that was a "force in the industry leading to the rise of offshore  
2 outsourcing." Infosys advertises its services with the slogan: "Get Flat World business  
3 secrets from a flat world company." Infosys has over 50 offices worldwide.

4 4. Defendant Mahesh Prakash Kinkhikar is, and at all relevant times mentioned  
5 herein was, an adult person and, on information and belief, a resident of Contra Costa County,  
6 California.

7 5. Defendant Anmol Srivastava is, and at all relevant times mentioned herein was,  
8 an adult person and, on information and belief, a resident of Alameda County, California.

9 6. The true names and capacities, whether individual, corporate, associate or  
10 otherwise, of each of the Defendants designated herein as DOES are unknown to Plaintiff at  
11 this time and therefore said Defendants are sued by such fictitious names. Plaintiff will  
12 amend this Complaint to show their true names and capacities when ascertained. Plaintiff is  
13 informed and believes and thereon alleges that each Defendant designated herein as a DOE  
14 defendant is legally responsible in some manner for the events and happenings herein alleged  
15 and in such manner proximately caused damages to Plaintiff as hereinafter further alleged.

16 7. Plaintiff is informed and believes and thereon alleges that each of the  
17 Defendants was acting as the agent, employee, partner, or servant of each of the remaining  
18 Defendants and was acting within the course and scope of that relationship, and gave consent  
19 to, ratified, and authorized the acts alleged herein to each of the remaining defendants.

#### 20 JURISDICTION

21 8. The Court has personal jurisdiction over Defendants pursuant to California  
22 Code of Civil Procedure § 410.10 because they are residents of California, are doing business  
23 in the State of California, have committed acts or omissions in California with respect to one  
24 or more causes of action arising from these acts or omissions, and/or have caused effects in  
25 California with respect to one or more causes of action arising from these effects.

26 9. Venue is proper in this county in accordance with Section 12965(b) of the  
27 California Government Code because this is an action brought under FEHA and this is the  
28 county in which the unlawful practices are alleged to have been committed.

10. Venue is also proper in this county in accordance with Section 395(a) of the California Code of Civil Procedure because at least one defendant resides in this county.

**FACTS COMMON TO ALL CAUSES OF ACTION**

11. On February 25, 2008, Plaintiff began working for Infosys in the purported role of "Consultant – Enterprise Solutions," pursuant to a written employment contract.

12. From February 25, 2008 until November 11, 2008, Plaintiff worked for the Fremont, California office of Infosys, an office in which the vast majority of employees are nationals of India or individuals of Indian ancestry/national origin.

13. Plaintiff's work at Infosys consisted of computer work, specifically, data warehousing tasks, and answering telephone calls from India regarding such tasks.

14. In addition to working regular daytime hours, Plaintiff was regularly on call for several hours at night to answer phone calls from India, even past midnight as well as on weekends, but was not paid overtime as required by California law.

15. While working for Infosys in California, Plaintiff suffered ongoing harassment and differential, discriminatory treatment on the basis of her being an American of Indian national origin/ancestry, and on the basis of her gender (female), her age (over 40), and her religion (Hinduism and Christianity), by Infosys supervisors and agents, including Defendant Mahesh Prakash Kinkhikar and Defendant Anmol Srivastava. For example:

- a. Infosys management routinely disparaged Americans, including Plaintiff, by making statements such as the following:
  - i. Americans have no "values."
  - ii. Americans do not have "family values."
  - iii. Layoffs in America are good because the jobs will be outsourced.
- b. Infosys management ridiculed Plaintiff for celebrating Thanksgiving, telling her that she should not celebrate Thanksgiving because she is Indian, and that therefore she must work on Thanksgiving Day.
- c. After learning that Plaintiff's children have traditionally eaten turkey at Thanksgiving, Infosys management ridiculed Plaintiff's children and called



1           them "ABCD," an acronym for "American-Born Confused Desi," an insulting  
2           term used to criticize people of Indian ancestry who are Americanized.

3           d. After learning the Plaintiff's children were born in India, Infosys management  
4           continued to ridicule Plaintiff's children and called them "IBCD," short for  
5           "Indian-Born Confused Desi."

6           e. Infosys management also ridiculed Plaintiff for celebrating Christmas, saying  
7           that Christmas is not important, that "we" do not celebrate Christmas, that she  
8           should not celebrate Christmas, and that therefore she must work on Christmas  
9           Day.

10          f. Infosys management repeatedly discussed the quality of Plaintiff's work by  
11          explicitly commenting on their expectations for "a woman your age."

12          16. The ongoing harassment that Plaintiff experienced at Infosys was so severe that  
13          Plaintiff has suffered humiliation, mental anguish, and emotional and physical distress, and  
14          has been injured in mind and body with emotional harm, anxiety, and inability to sleep well,  
15          affecting her ability to perform certain tasks, including searching for new employment. As a  
16          result, Plaintiff sought and received medical treatment, including psychotherapy for the first  
17          time in her life, which has continued.

18          17. On November 11, 2008, Plaintiff was constructively discharged from her  
19          employment at Infosys, as set forth in more detail below.

20          18. On August 12, 2009, and within one year of the dates of harassment as herein  
21          alleged, Plaintiff filed charges of harassment, constructive discharge, and failure to prevent  
22          harassment/discrimination, with the California Department of Fair Employment and Housing  
23          ("DFEH") against Infosys. A copy of these charges is appended hereto as Exhibit A and is  
24          incorporated by this reference as though fully set forth herein.

25          19. On August 17, 2009, the DFEH issued to Plaintiff notice of right to bring a  
26          civil action based on the charges that Plaintiff filed with DFEH. A copy of this notice is  
27          appended hereto as Exhibit B and is incorporated by this reference as though fully set forth  
28          herein.

**UNCONSCIONABLE ARBITRATION CLAUSE**

20. Infosys has purported to prevent Plaintiff from pursuing her claims in this Court by imposing upon Plaintiff a requirement that her disputes with Infosys be submitted for binding arbitration. This purported requirement is procedurally unconscionable. It was imposed on Plaintiff as a condition of her employment at Infosys with no opportunity to negotiate, as part of a "US Joining Kit" that, on information and belief, Infosys imposed on all of its employees in the United States. It is also substantively unconscionable. It is one-sided, purporting to allow Infosys to go to court and seek injunctive relief on certain claims against its employees, and to recover attorneys fees and costs on such claims, while barring the employee from access to court on the employee's claims against Infosys. Therefore, Infosys's purported requirement to arbitrate is unconscionable and unenforceable. *See, e.g., Davis v. O'Melveny & Myers*, 485 F.3d 1066, 1084 (9th Cir. Cal. 2007); *Dunham v. Envtl. Chem. Corp.*, 2006 U.S. Dist. LEXIS 61068 (N.D. Cal. Aug. 16, 2006); *Abramson v. Juniper Networks*, 115 Cal. App. 4th 638, 665 (2004); *Fltz v. NCR Corporation*, 118 Cal. App. 4th 702, 723 (2004); *Armendariz v. Foundation Health Psychcare Services, Inc.*, 24 Cal.4th 83, 113 (2000); *Kinney v. United Healthcare Services, Inc.*, 70 Cal. App. 4th 1322, 1332 (1999); *Stirlen v. Supercuts*, 51 Cal. App. 4th 1519, 1540-1541 (1997).

**COUNT I: HARASSMENT IN VIOLATION OF FEHA  
(Against All Defendants)**

21. Plaintiff realleges and incorporates by reference each and every allegation contained in each of the above paragraphs as if fully set forth herein.

22. Defendants' actions against Plaintiff, as alleged above, constituted unlawful harassment in employment on the basis of national origin/ancestry, gender, age, and religion, in violation of FEHA, Government Code § 12940(j).

23. Defendant Infosys and its agents and supervisors, including Defendant Mahesh Prakash Kinkhikar and Defendant Anmol Srivastava, engaged in the actions alleged herein with the intent of harassing Plaintiff on account of her national origin/ancestry, gender, age, and religion.

24. Defendant Infosys and its supervisors and agents, including Defendant Mahesh Prakash Kinkhikar and Defendant Anmol Srivastava, knew or should have known of these harassing actions because they either committed them, personally witnessed them, or were informed of them. Despite actual and constructive knowledge of the above-mentioned harassment by Defendant Infosys and its supervisors and agents, Defendant Infosys and its supervisors and agents failed to take immediate and appropriate corrective action to stop the harassment.

25. As a further proximate result of Defendants' harassment of Plaintiff, as alleged above, Plaintiff has been harmed in that Plaintiff has suffered humiliation, mental anguish, and emotional and physical distress, and has been injured in mind and body with emotional harm, anxiety, and inability to sleep well. As a result of such harassment and consequent harm, Plaintiff has suffered such damages in an amount according to proof.

26. As a further direct and proximate result of Defendants' conduct, Plaintiff was forced to resign and thereafter unable to work for a period of time, or in the technology sector, and accordingly, lost wages and earning capacity in an amount according to proof.

27. The above-recited actions of Defendants in harassing Plaintiff were done with malice, fraud, or oppression, and in reckless disregard of Plaintiff's rights under the FEHA. Because these acts were carried out in a despicable, deliberate, and intentional manner, this conduct warrants the assessment of punitive damages in a sum sufficient to punish and deter future such conduct.

**COUNT II: FAILURE TO PAY OVERTIME COMPENSATION**  
**(Against Defendant Infosys Technologies Limited)**

28. Plaintiff realleges and incorporates by reference each and every allegation contained in each of the above paragraphs as if fully set forth herein.

29. Pursuant to Plaintiff's employment contract with Infosys, Infosys was to pay Plaintiff at the rate of \$89,005 per annum, and thus at a regular rate of pay of \$42.79 per hour.

30. In addition to working regular daytime hours, Plaintiff was also regularly on call for several hours at nighttime to answer telephone calls from India, but was not paid

1 overtime wages as required under California law.

2 31. During the period from August 24, 2008 to November 10, 2008, Plaintiff  
3 worked a total of 768.5 hours and received a total compensation for that period of  
4 approximately \$19,020, which did not include any pay for overtime hours worked. A detailed  
5 statement of the days worked, the hours worked each day, and the overtime pay that should  
6 have been paid is attached hereto as Exhibit C and incorporated herein by reference.

7 32. California Labor Code § 1198 provides that it is unlawful to employ persons  
8 for longer than the hours set by the Industrial Welfare Commission or under conditions  
9 prohibited by the applicable wage orders.

10 33. At all times relevant herein, Industrial Welfare Commission Wage Order No.  
11 4-2001, which applies to Plaintiff's employment by Infosys, provided that an employee "shall  
12 not be employed more than eight (8) hours in any workday or more than 40 hours in any  
13 workweek unless the employee receives one and one-half (1 1/2) times such employee's  
14 regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of  
15 labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more  
16 than six (6) days in any workweek is permissible provided the employee is compensated for  
17 such overtime at not less than: (a) One and one-half (1 1/2) times the employee's regular rate  
18 of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any  
19 workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work  
20 in a workweek; and (b) Double the employee's regular rate of pay for all hours worked in  
21 excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the  
22 seventh (7th) consecutive day of work in a workweek. (c) The overtime rate of compensation  
23 required to be paid to a nonexempt full-time salaried employee shall be computed by using the  
24 employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary."

25 34. Under the provisions of the above-referenced Wage Order, Plaintiff should  
26 have received a total of \$40,648 for hours worked during the period from August 24, 2008 to  
27 November 10, 2008. Therefore, for unpaid overtime, Defendant Infosys owes Plaintiff the  
28 sum of \$21,384, representing the difference between the amount of wages owed pursuant to



1 the Wage Order and the amount actually paid to Plaintiff. Defendant has failed and continues  
2 to fail to pay Plaintiff the amount owed.

3 35. Defendant Infosys's failure to pay Plaintiff the sum of \$21,384, as required by  
4 the applicable Wage Order, violates the provisions of California Labor Code § 1198 and is  
5 therefore unlawful.

6  
7 **COUNT III: CONSTRUCTIVE DISCHARGE IN VIOLATION OF FEHA**  
8 **(Against All Defendants)**

9 36. Plaintiff realleges and incorporates by reference each and every allegation  
10 contained in each of the above paragraphs as if fully set forth herein.

11 37. The actions alleged above constituting harassment in violation of Government  
12 Code § 12940(j) caused Plaintiff to be constructively discharged from her employment, in that  
13 Infosys intentionally created and knowingly permitted working conditions set forth above,  
14 which were so intolerable or aggravated at the time of Plaintiff's resignation that a reasonable  
15 employer would have realized that a reasonable person in Plaintiff's position would be  
16 compelled to resign. As a proximate cause of these working conditions, Plaintiff did resign  
17 from her employment on November 11, 2008.

18 38. As a proximate result of Defendants' harassment of Plaintiff, as alleged above,  
19 Plaintiff has been harmed in that Plaintiff has suffered the loss of wages, including money that  
20 Plaintiff would have received if Plaintiff had not been constructively discharged from her  
21 position with Defendant Infosys. As a result of such harassment and consequent harm,  
22 Plaintiff has suffered such damages in an amount according to proof.

23 39. As a further proximate result of Defendants' harassment of Plaintiff, as alleged  
24 above, Plaintiff has been harmed in that Plaintiff has suffered the intangible loss of such  
25 employment-related opportunities as experience in the position from which Plaintiff was  
26 constructively discharged. As a result of such harassment and consequent harm, Plaintiff has  
27 suffered such damages in an amount according to proof.

28 40. The above-recited actions of Defendants in constructively discharging Plaintiff  
from employment were done with malice, fraud, or oppression, and in reckless disregard of

1 Plaintiff's rights under the FEHA. Because these acts were carried out in a despicable,  
2 deliberate, and intentional manner, this conduct warrants the assessment of punitive damages  
3 in a sum sufficient to punish and deter future such conduct.

4  
5 **COUNT IV: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**  
6 **(Against All Defendants)**

7 41. Plaintiff realleges and incorporates by reference each and every allegation  
8 contained in each of the above paragraphs as if fully set forth herein.

9 42. During Plaintiff's employment at Infosys, Defendant Infosys and its agents and  
10 supervisors, including Defendant Mahesh Prakash Kinkhikar and Defendant Anmol Srivastava,  
11 engaged in a pattern of conduct designed to humiliate Plaintiff.

12 43. Defendant Infosys, standing in a position of authority over Plaintiff, and  
13 Infosys's agents and supervisors, including Defendant Mahesh Prakash Kinkhikar and  
14 Defendant Anmol Srivastava, abusing their positions as supervisors over Plaintiff, acted as set  
15 forth above knowingly and unreasonably with the intent to inflict mental anguish, humiliation,  
16 emotional, and physical distress.

17 44. The conduct of Defendant Infosys and its agents and supervisors had a severe  
18 and traumatic effect on Plaintiff's emotional tranquility. As a proximate result of their acts,  
19 Plaintiff suffered severe emotional distress and anxiety which resulted in inability to sleep  
20 well.

21 45. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered  
22 general damages in an amount according to proof.

23 46. As a further direct and proximate result of Defendants' conduct, Plaintiff was  
24 forced to resign and thereafter unable to work for a period of time, or in the technology sector,  
25 and accordingly, lost wages and earning capacity in an amount according to proof.

26 **COUNT V: BREACH OF IMPLIED COVENANT OF**  
27 **GOOD FAITH AND FAIR DEALING**  
28 **(Against Defendant Infosys Technologies Limited)**

47. Plaintiff realleges and incorporates by reference each and every allegation  
contained in each of the above paragraphs as if fully set forth herein.

1           48. Plaintiff was employed by Infosys pursuant to an employment contract. The  
2 contract contained an implied covenant of good faith and fair dealing, which obligated Infosys  
3 to perform the terms and conditions of the agreement fairly and in good faith and to refrain  
4 from doing any act that would prevent or impede Plaintiff from performing any or all of the  
5 conditions of the contract that they agreed to perform, or any act that would deprive Plaintiff  
6 of the benefits of the contract.

7           49. Defendant Infosys breached the implied covenant of good faith and fair dealing  
8 under the employment agreement by the acts set forth above, intentionally, maliciously, and  
9 for reasons extraneous to the contract. Plaintiff's employment terminated not because of any  
10 reasons relating to Plaintiff's performance but because of conditions in the workplace that  
11 were so intolerable or aggravated at the time of Plaintiff's resignation that Plaintiff was  
12 compelled to resign.

13           50. As a proximate result of Defendant Infosys's breach of the implied covenant of  
14 good faith and fair dealing, Plaintiff has suffered and continues to suffer losses in earnings  
15 and in earning capacity in an amount according to proof.

16                           **PRAYER FOR RELIEF**

17           WHEREFORE, Plaintiff prays for judgment as follows:

- 18           a) For compensatory damages in the amount of \$21,384, representing the amount of  
19           unpaid overtime compensation;  
20           b) For interest on any overtime compensation due from the day such amounts were  
21           due;  
22           c) For an award of civil penalties pursuant to Labor Code § 2699;  
23           d) For reasonable attorney's fees pursuant to Labor Code § 1194(a);  
24           e) For back pay, front pay, and other monetary relief according to proof;  
25           f) For general damages according to proof;  
26           g) For punitive damages in an amount appropriate to punish Defendant for its  
27           wrongful conduct and to set an example for others;  
28           h) For interest on the sum of damages awarded;

- 1 i) For reasonable attorney's fees and costs, including expert witness fees, pursuant to  
2 Government Code Section 12965(b);  
3 j) For costs of suit herein incurred; and  
4 k) For such other and further relief as the Court deems proper.

5 **JURY DEMAND**

6 Plaintiff hereby demands a trial by jury on all counts.

7 DATED: November 23, 2009

Respectfully submitted,

8 THE TIDRICK LAW FIRM

9  
10  
11 By:

  
STEVEN G. TIDRICK, SBN 224760

12 THE TIDRICK LAW FIRM  
13 6114 La Salle Avenue #500  
14 Oakland, California 94611  
15 Telephone: (510) 381-3832  
16 Facsimile: (510) 291-3226  
17 E-mail: sgt@tidricklaw.com

18 Attorney for Plaintiff  
19 PROMILA AWASTHI  
20  
21  
22  
23  
24  
25  
26  
27  
28



NOV-30-2009 06:42

P.14/21

**Exhibit A**

NOV-30-2009 06:42

P.15/21

To: () Page 2 of 3

2009-06-12 20:03:06 (GMT)

THE TIDRICK LAW FIRM From: THE TIDRICK LAW FIRM

## \*\*\* EMPLOYMENT \*\*\*

COMPLAINT OF DISCRIMINATION UNDER  
THE PROVISIONS OF THE CALIFORNIA  
FAIR EMPLOYMENT AND HOUSING ACT

DFEH # E200910M0139-00-asc

OPEN USE ONLY

## CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

YOUR NAME (Include Mr., or Ms.) <b>Ms. Pramila Awasthi</b>		TELEPHONE NUMBER (INCLUDE AREA CODE) <b>(408) 712-7547</b>
ADDRESS <b>387 Summerfield Drive</b>		
CITY/STATE/ZIP <b>Milpitas</b>	COUNTY <b>Clara</b>	COUNTY CODE <b>085</b>
NAME OF THE EMPLOYER, PERSON, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, OR STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME: <b>Infosys Technologies Ltd.</b>		
ADDRESS <b>6607 Kaiser Drive</b>		TELEPHONE NUMBER (Include Area Code) <b>510-742-3000</b>
CITY/STATE/ZIP <b>Fremont, California 94555</b>		COUNTY CODE <b>Alameda</b>
NO. OF EMPLOYEES/AGENCY IN (approx.) <b>approx. 103,000 worldwide</b>		DATE MOST RECENT ON CONTINUING DISCRIMINATION <b>Dec. 3, 2008</b>
THE PARTICULARS ARE: I allege that on <b>8/18/08 - 12/03/08</b> , the following conduct occurred:		RESPONSE CODE

by **Nahesh Prakash Kinkhkar (Manager); Anmol Srivastava (Supervisor); Prasita Kuty (Human Resources)**  
Name of Person Job Title (superintendent/supervisor/owner/owner's agent)

because of:

<input checked="" type="checkbox"/> sex	<input checked="" type="checkbox"/> marital status	<input type="checkbox"/> disability (physical or mental)	<input type="checkbox"/> retaliation for reporting or pursuing
<input checked="" type="checkbox"/> race	<input type="checkbox"/> criminal record	<input type="checkbox"/> marital status (marital)	<input type="checkbox"/> ancestry or reporting a person's
<input checked="" type="checkbox"/> religion	<input type="checkbox"/> employment status	<input type="checkbox"/> or genetic characteristics	<input type="checkbox"/> race or ethnicity
<input checked="" type="checkbox"/> ethnicity	<input type="checkbox"/> education	<input type="checkbox"/> other (specify)	

State what you  
believe to be the  
reason(s) for  
discrimination

While working for the Fremont office of this company headquartered in Bangalore, India, I experienced ongoing harassment on the basis of being an American of Indian national origin/ancestry, and on the basis of my age and gender. For example, company management insulted me for celebrating Thanksgiving and Christmas, and called my children "XCU," a derogatory term meaning "Indian-born Confused Cret." As another example, on multiple occasions, company management said that I was doing good work for a woman at your age. The conditions were so intolerable that I was forced to quit. Even after I quit, the manager demanded that I come to work, and the HR department harassed me by phone and by e-mail.

I wish to pursue this matter in court. I hereby request that the Department of Fair Employment and Housing provide a right-to-work order. I understand that if I want a federal order of right-to-work, I must visit the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of the DFEH "Notice of Case Closed," or within 300 days of the alleged discriminatory act, whichever is earlier.

I have not been charged with making this report, nor do I make it based on fear of retaliation if I do not do so. I understand it is the Department of Fair Employment and Housing's policy to not pressure or request a complaint onto the complaint has been stated on the basis of "Complaints Directed Court Action."

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge except as to matters stated as my information and belief, and as to those matters I believe to be true.

Date 08/07/09  
City MILPITAS

Pramila Awasthi  
COMPLAINANT'S SIGNATURE

DATE FILED:

RECEIVED

AUG 12 2009

Department of Fair  
Employment and Housing  
Oakland District Office

STATE OF CALIFORNIA

DFEH-300-03 (09/08)  
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

NOV-30-2009 06:43

P.16/21

**Exhibit B**

STATE OF CALIFORNIA - STATE AND CONSUMER SERVICES AGENCY

ARNOLD SCHWARZENEGGER, Governor

**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

1515 Clay Street, Suite 701, Oakland, CA 94612  
(510) 622-2941 TTY (800) 700-2320 Fax (510) 622-2951  
www.dfeh.ca.gov



August 17, 2009

PROMILA AWASTHI  
3897 Summerfield Dr  
Milpitas, CA 94049

RE: E200910M0139-00-asc  
AWASTHI/INFOSYS TECHNOLOGIES LTD

Dear PROMILA AWASTHI:

**NOTICE OF CASE CLOSURE**

This letter informs that the above-referenced complaint that was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective August 12, 2009 because an immediate right-to-sue notice was requested. DFEH will take no further action on the complaint.

This letter is also the Right-To-Sue Notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

If a federal notice of Right-To-Sue is wanted, the U.S. Equal Employment Opportunity Commission (EEOC) must be visited to file a complaint within 30 days of receipt of this DFEH *Notice of Case Closure* or within 300 days of the alleged discriminatory act, whichever is earlier.




NOV-30-2009 06:43

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**Notice of Case Closure  
Page Two**

DFEH does not retain case files beyond three years after a complaint is filed, unless the case is still open at the end of the three-year period.

Sincerely,

  
Allan H. Pederson  
District Administrator

cc: Case File

**Mahesh Prakash Kanhikar  
Manager  
INFOSYS TECHNOLOGIES LTD  
6607 Kaiser Dr  
Fremont, CA 94555**

DFEH-200-43 (08/06)

**Exhibit C**

		daytime hours worked	nighttime hours worked	total hours for day	total hours for week	hours above 8 per day (1.5X pay)	hours above 40 per week (1.5X pay)	hours above 8 on 7th consecutive workday (2.0X pay)	1.5X pay	2.0X pay
Sunday	8/24/2008	0	1.75	1.75						
Monday	8/25/2008	8.75	1.75	10.5						
Tuesday	8/26/2008	8.75	1.75	10.5						
Wednesday	8/27/2008	8.75	1.75	10.5						
Thursday	8/28/2008	8.75	1.75	10.5						
Friday	8/29/2008	8.75	1.75	10.5						
Saturday	8/30/2008	0	0	0	54.25		14.25		\$ 915	
Sunday	8/31/2008	0	2.5	2.5						
Monday	9/1/2008	8.75	2.5	11.25						
Tuesday	9/2/2008	8.75	2.5	11.25						
Wednesday	9/3/2008	8.75	2.5	11.25						
Thursday	9/4/2008	8.75	2.5	11.25						
Friday	9/5/2008	8.75	0	8.75						
Saturday	9/6/2008	0	0	0	56.25		16.25		\$ 1,043	
Sunday	9/7/2008	0	2.5	2.5						
Monday	9/8/2008	8.75	2.5	11.25						
Tuesday	9/9/2008	8.75	2.5	11.25						
Wednesday	9/10/2008	8.75	2.5	11.25						
Thursday	9/11/2008	8.75	2.5	11.25						
Friday	9/12/2008	8.75	0	8.75						
Saturday	9/13/2008	0	0	0	56.25		16.25		\$ 1,043	
Sunday	9/14/2008	0	3	3						
Monday	9/15/2008	8.75	3	11.75						
Tuesday	9/16/2008	8.75	3	11.75						
Wednesday	9/17/2008	8.75	3	11.75						
Thursday	9/18/2008	8.75	3	11.75						
Friday	9/19/2008	8.75	0	8.75						
Saturday	9/20/2008	0	0	0	58.75		18.75		\$ 1,203	
Sunday	9/21/2008	0	3	3						

		daytime hours worked	nighttime hours worked	total hours for day	total hours for week	hours above 8 per day (1.5X pay)	hours above 40 per week (1.5X pay)	hours above 8 on 7th consecutive workday (2.0X pay)	1.5X pay	2.0X pay
Monday	9/22/2008	8.75	3	11.75						
Tuesday	9/23/2008	8.75	3	11.75						
Wednesday	9/24/2008	8.75	3	11.75						
Thursday	9/25/2008	8.75	3	11.75						
Friday	9/26/2008	8.75	0	8.75						
Saturday	9/27/2008	0	0	0	58.75		18.75		\$ 1,203	
Sunday	9/28/2008	0	3	3						
Monday	9/29/2008	8.75	3	11.75						
Tuesday	9/30/2008	8.75	3	11.75						
Wednesday	10/1/2008	8.75	3	11.75						
Thursday	10/2/2008	8.75	3	11.75						
Friday	10/3/2008	8.75	0	8.75						
Saturday	10/4/2008	0	0	0	58.75		18.75		\$ 1,203	
Sunday	10/5/2008	0	0	0						
Monday	10/6/2008	8.75	3	11.75						
Tuesday	10/7/2008	8.75	3	11.75						
Wednesday	10/8/2008	8.75	3	11.75						
Thursday	10/9/2008	8.75	3	11.75						
Friday	10/10/2008	8.75	3	11.75						
Saturday	10/11/2008	8.75	3	11.75	70.5		30.5		\$ 1,958	
Sunday	10/12/2008	8.75	3	11.75						
Monday	10/13/2008	8.75	3	11.75						
Tuesday	10/14/2008	8.75	3	11.75						
Wednesday	10/15/2008	8.75	3	11.75						
Thursday	10/16/2008	8.75	3	11.75						
Friday	10/17/2008	8.75	3	11.75						
Saturday	10/18/2008	8.75	3	11.75	82.25		42.25	3.75	\$ 2,712	\$ 321
Sunday	10/19/2008	8.75	3	11.75						
Monday	10/20/2008	8.75	3	11.75						

Page 2 of 3

Exhibit C

TOTAL P.21



## **Exhibit B**

# SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

ENDORSED  
FILED  
ALAMEDA COUNTY

DEC 24 2009

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

INFOSYS TECHNOLOGIES LIMITED, a foreign corporation;  
MAHESH PRAKASH KINHIKAR; ANMOL SRIVASTAVA;  
PRASITA KUTTY; and DOES 1-20

**YOU ARE BEING SUED BY PLAINTIFF:**

**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**  
Promila Awasthi

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of the State of California, County of Alameda  
René C. Davidson Alameda County Courthouse  
1225 Fallon St., Oakland, CA, 94612

CASE NUMBER  
(Número del Caso)

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es)

Steven G. Tidrick, Esq., The Tidrick Law Firm  
6114 La Salle Avenue #500, Oakland, California 94611, (510) 381-3832

DATE  
(Fecha)

DEC 24 2009

PAI S. SWEETEN

Clerk, by  
(Secretario)

*[Signature]*

Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED: You are served**

1. ☒ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
- ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
- ☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
- ☐ other (specify):
4. ☒ by personal delivery on (date): 1/5/2010

Page 1 of 1

STEVEN G. TIDRICK, SBN 224760  
THE TIDRICK LAW FIRM  
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E-mail: sgt@tidricklaw.com

Attorney for Plaintiff  
PROMILA AWASTHI

ENDORSED  
FILED  
ALAMEDA COUNTY

DEC 24 2009

CLERK OF THE SUPERIOR COURT  
B. KIM DRILLON

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA  
UNLIMITED JURISDICTION

PROMILA AWASTHI,  
Plaintiff,

v.

INFOSYS TECHNOLOGIES LIMITED,  
a foreign corporation; MAHESH PRAKASH  
KINHIKAR; ANMOL SRIVASTAVA;  
PRASITA KUTTY; and DOES 1-20,  
Defendants.

Civil Case Number: RG09486022

ASSIGNED FOR ALL PURPOSES TO  
JUDGE GAIL BREWSTER BEREOLA  
DEPARTMENT 19

**FIRST AMENDED COMPLAINT FOR:**

- (1) HARASSMENT IN VIOLATION OF FEHA;
- (2) FAILURE TO PAY OVERTIME;
- (3) CONSTRUCTIVE DISCHARGE IN VIOLATION OF FEHA;
- (4) INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS;
- (5) BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
- (6) WAITING TIME PENALTIES UNDER LABOR CODE § 203

**JURY TRIAL DEMANDED**

Plaintiff asserts this First Amended Complaint against Defendants and alleges as follows:

**NATURE OF THE ACTION**

1. As detailed in this Complaint, Promila Awasthi ("Plaintiff"), a United States citizen originally from India and of Indian ancestry, age 48, was employed at the Fremont,

California office of Defendant Infosys Technologies Limited ("Infosys"), a foreign corporation headquartered in Bangalore, India, with about 105,000 employees worldwide. She performed computer work for Infosys consisting of data warehousing tasks. In addition to working regular daytime hours, she was regularly on call for several hours at night to answer phone calls from India, even past midnight, as well as on weekends, but was not paid overtime as required by California law. While working at Infosys, she was routinely harassed by Infosys management, nationals of India, on the basis of her being an American of Indian ancestry and national origin, and on the basis of her age and gender. Infosys management routinely disparaged Americans, including Plaintiff, as not having "family values," and stated that layoffs in America are good because the jobs will be outsourced. Infosys management ridiculed Plaintiff for celebrating the American holiday of Thanksgiving, telling her that she should not celebrate Thanksgiving because she is Indian, and that therefore she must work on Thanksgiving Day. Infosys management also ridiculed Plaintiff for celebrating Christmas, saying that "we" do not celebrate Christmas, and that she should not celebrate Christmas. Infosys management also ridiculed Plaintiff's children for celebrating Thanksgiving, and called them "ABCD," short for "American-Born Confused Desi," and "IBCD," short for "Indian-Born Confused Desi," insulting terms used to criticize people of Indian ancestry who are Americanized. Infosys management repeatedly discussed the quality of Plaintiff's work by explicitly commenting on their expectations for "a woman your age." The working conditions were so intolerable that Plaintiff was eventually forced to quit. Plaintiff sues Infosys under the California Fair Employment and Housing Act, California Government Code §§ 12900 *et seq.* ("FEHA"), the California Labor Code, and the common law, seeking monetary damages, including punitive damages, and attorneys fees and costs.

#### **THE PARTIES**

2. Plaintiff Promila Awasthi ("Plaintiff") is an individual and a resident of the County of Santa Clara, State of California.

3. Defendant Infosys Technologies Limited is, and at all times mentioned was, a foreign corporation having a place of business in Alameda County, California, at 6607 Kaiser



1 Drive, Fremont. Headquartered in Bangalore, India (a city known as the "Silicon Valley of  
2 India"), Infosys describes itself as a company that "delivers technology-enabled business  
3 solutions that help Global 2000 companies win in a Flat World." Infosys advertises itself as a  
4 "global leader in the 'next generation' of IT and consulting." Infosys touts that it "pioneered  
5 the Global Delivery Model" that was a "force in the industry leading to the rise of offshore  
6 outsourcing." Infosys advertises its services with the slogan: "Get Flat World business  
7 secrets from a flat world company." Infosys has over 50 offices worldwide.

8 4. Defendant Mahesh Prakash Kinhikar, at all relevant times mentioned herein  
9 was, an adult person and, on information and belief, a resident of Contra Costa County,  
10 California.

11 5. Defendant Anmol Srivastava, at all relevant times mentioned herein was, an  
12 adult person and, on information and belief, a resident of Alameda County, California.

13 6. Defendant Prasita Kutty is and, at all relevant times mentioned herein was, an  
14 adult person and, on information and belief, a resident of Santa Clara County, California.

15 7. The true names and capacities, whether individual, corporate, associate or  
16 otherwise, of each of the Defendants designated herein as DOES are unknown to Plaintiff at  
17 this time and therefore said Defendants are sued by such fictitious names. Plaintiff will  
18 amend this Complaint to show their true names and capacities when ascertained. Plaintiff is  
19 informed and believes and thereon alleges that each Defendant designated herein as a DOE  
20 defendant is legally responsible in some manner for the events and happenings herein alleged  
21 and in such manner proximately caused damages to Plaintiff as hereinafter further alleged.

22 8. Plaintiff is informed and believes and thereon alleges that each of the  
23 Defendants was acting as the agent, employee, partner, or servant of each of the remaining  
24 Defendants and was acting within the course and scope of that relationship, and gave consent  
25 to, ratified, and authorized the acts alleged herein to each of the remaining defendants.

#### 26 JURISDICTION

27 9. The Court has personal jurisdiction over Defendants pursuant to California  
28 Code of Civil Procedure § 410.10 because they are residents of California, are doing business

1 in the State of California, have committed acts or omissions in California with respect to one  
2 or more causes of action arising from these acts or omissions, and/or have caused effects in  
3 California with respect to one or more causes of action arising from these effects.

4 10. Venue is proper in this county in accordance with Section 12965(b) of the  
5 California Government Code because this is an action brought under FEHA and this is the  
6 county in which the unlawful practices are alleged to have been committed.

7 11. Venue is also proper in this county in accordance with Section 395(a) of the  
8 California Code of Civil Procedure because at least one defendant resides in this county.

9 **FACTS COMMON TO ALL CAUSES OF ACTION**

10 12. On February 25, 2008, Plaintiff began working for Infosys in the purported  
11 role of "Consultant – Enterprise Solutions," pursuant to a written employment contract.

12 13. From February 25, 2008 until November 11, 2008, Plaintiff worked for the  
13 Fremont, California office of Infosys, an office in which the vast majority of employees are  
14 nationals of India or individuals of Indian ancestry/national origin.

15 14. Plaintiff's work at Infosys consisted of computer work, specifically, data  
16 warehousing tasks, and answering telephone calls from India regarding such tasks.

17 15. In addition to working regular daytime hours, Plaintiff was regularly on call for  
18 several hours at night to answer phone calls from India, even past midnight as well as on  
19 weekends, but was not paid overtime as required by California law.

20 16. While working for Infosys in California, Plaintiff suffered ongoing harassment  
21 and differential, discriminatory treatment on the basis of her being an American of Indian  
22 national origin/ancestry, and on the basis of her gender (female), her age (over 40), and her  
23 religion (Hinduism and Christianity), by Infosys supervisors and agents, including Defendant  
24 Mahesh Prakash Kinhikar and Defendant Anmol Srivastava. For example:

25 a. Infosys management routinely disparaged Americans, including Plaintiff, by  
26 making statements such as the following:

27 i. Americans have no "values."

28 ii. Americans do not have "family values."

iii. Layoffs in America are good because the jobs will be outsourced.

b. Infosys management ridiculed Plaintiff for celebrating Thanksgiving, telling her that she should not celebrate Thanksgiving because she is Indian, and that therefore she must work on Thanksgiving Day.

c. After learning that Plaintiff's children have traditionally eaten turkey at Thanksgiving, Infosys management ridiculed Plaintiff's children and called them "ABCD," an acronym for "American-Born Confused Desi," an insulting term used to criticize people of Indian ancestry who are Americanized.

d. After learning the Plaintiff's children were born in India, Infosys management continued to ridicule Plaintiff's children and called them "IBCD," short for "Indian-Born Confused Desi."

e. Infosys management also ridiculed Plaintiff for celebrating Christmas, saying that Christmas is not important, that "we" do not celebrate Christmas, that she should not celebrate Christmas, and that therefore she must work on Christmas Day.

f. Infosys management repeatedly discussed the quality of Plaintiff's work by explicitly commenting on their expectations for "a woman your age."

17. The ongoing harassment that Plaintiff experienced at Infosys was so severe that Plaintiff has suffered humiliation, mental anguish, and emotional and physical distress, and has been injured in mind and body with emotional harm, anxiety, and inability to sleep well, affecting her ability to perform certain tasks, including searching for new employment. As a result, Plaintiff sought and received medical treatment, including psychotherapy for the first time in her life, which has continued.

18. On November 11, 2008, Plaintiff was constructively discharged from her employment at Infosys, as set forth in more detail below.

19. On August 12, 2009, and within one year of the dates of harassment as herein alleged, Plaintiff filed charges of harassment, constructive discharge, and failure to prevent harassment/discrimination, with the California Department of Fair Employment and Housing



1 ("DFEH") against Infosys. A copy of these charges is appended hereto as **Exhibit A** and is  
 2 incorporated by this reference as though fully set forth herein.

3 20. On August 17, 2009, the DFEH issued to Plaintiff notice of right to bring a  
 4 civil action based on the charges that Plaintiff filed with DFEH. A copy of this notice is  
 5 appended hereto as **Exhibit B** and is incorporated by this reference as though fully set forth  
 6 herein.

### 7 **UNCONSONABLE ARBITRATION CLAUSE**

8 21. Infosys has purported to prevent Plaintiff from pursuing her claims in this  
 9 Court by imposing upon Plaintiff a requirement that her disputes with Infosys be submitted  
 10 for binding arbitration. This purported requirement is procedurally unconscionable. It was  
 11 imposed on Plaintiff as a condition of her employment at Infosys with no opportunity to  
 12 negotiate, as part of a "US Joining Kit" that, on information and belief, Infosys imposed on all  
 13 of its employees in the United States. It is also substantively unconscionable. It is one-sided,  
 14 purporting to allow Infosys to go to court and seek injunctive relief on certain claims against  
 15 its employees, and to recover attorneys fees and costs on such claims, while barring the  
 16 employee from access to court on the employee's claims against Infosys. Therefore,  
 17 Infosys's purported requirement to arbitrate is unconscionable and unenforceable. *See, e.g.,*  
 18 *Davis v. O'Melveny & Myers*, 485 F.3d 1066, 1084 (9th Cir. Cal. 2007); *Dunham v. Envtl.*  
 19 *Chem. Corp.*, 2006 U.S. Dist. LEXIS 61068 (N.D. Cal. Aug. 16, 2006); *Abramson v. Juniper*  
 20 *Networks*, 115 Cal. App. 4th 638, 665 (2004); *Fitz v. NCR Corporation*, 118 Cal. App. 4th  
 21 702, 723 (2004); *Armendariz v. Foundation Health Psychcare Services, Inc.*, 24 Cal.4th 83,  
 22 113 (2000); *Kinney v. United Healthcare Services, Inc.*, 70 Cal. App. 4th 1322, 1332 (1999);  
 23 *Stirlen v. Supercuts*, 51 Cal. App. 4th 1519, 1540-1541 (1997).

### 24 **COUNT I: HARASSMENT IN VIOLATION OF FEHA** 25 **(Against Defendants Infosys Technologies Limited, Mahesh Prakash Kinbikar,** **and Anmol Srivastava)**

26 22. Plaintiff realleges and incorporates by reference each and every allegation  
 27 contained in each of the above paragraphs as if fully set forth herein.

28 23. Defendants' actions against Plaintiff, as alleged above, constituted unlawful



1 harassment in employment on the basis of national origin/ancestry, gender, age, and religion,  
2 in violation of FEHA, Government Code § 12940(j).

3 24. Defendant Infosys and its agents and supervisors, including Defendant Mahesh  
4 Prakash Kinhikar and Defendant Anmol Srivastava, engaged in the actions alleged herein with  
5 the intent of harassing Plaintiff on account of her national origin/ancestry, gender, age, and  
6 religion.

7 25. Defendant Infosys and its supervisors and agents, including Defendant Mahesh  
8 Prakash Kinhikar and Defendant Anmol Srivastava, knew or should have known of these  
9 harassing actions because they either committed them, personally witnessed them, or were  
10 informed of them. Despite actual and constructive knowledge of the above-mentioned  
11 harassment by Defendant Infosys and its supervisors and agents, Defendant Infosys and its  
12 supervisors and agents failed to take immediate and appropriate corrective action to stop the  
13 harassment.

14 26. As a further proximate result of Defendants' harassment of Plaintiff, as alleged  
15 above, Plaintiff has been harmed in that Plaintiff has suffered humiliation, mental anguish,  
16 and emotional and physical distress, and has been injured in mind and body with emotional  
17 harm, anxiety, and inability to sleep well. As a result of such harassment and consequent  
18 harm, Plaintiff has suffered such damages in an amount according to proof.

19 27. As a further direct and proximate result of Defendants' conduct, Plaintiff was  
20 forced to resign and thereafter unable to work for a period of time, or in the technology sector,  
21 and accordingly, lost wages and earning capacity in an amount according to proof.

22 28. The above-recited actions of Defendants in harassing Plaintiff were done with  
23 malice, fraud, or oppression, and in reckless disregard of Plaintiff's rights under the FEHA.  
24 Because these acts were carried out in a despicable, deliberate, and intentional manner, this  
25 conduct warrants the assessment of punitive damages in a sum sufficient to punish and deter  
26 future such conduct.

27 //

28 //

**COUNT II: FAILURE TO PAY OVERTIME COMPENSATION  
(Against Defendant Infosys Technologies Limited)**

29. Plaintiff realleges and incorporates by reference each and every allegation contained in each of the above paragraphs as if fully set forth herein.

30. Pursuant to Plaintiff's employment contract with Infosys, Infosys was to pay Plaintiff at the rate of \$89,005 per annum, and thus at a regular rate of pay of \$42.79 per hour.

31. In addition to working regular daytime hours, Plaintiff was also regularly on call for several hours at nighttime to answer telephone calls from India, but was not paid overtime wages as required under California law.

32. During the period from August 24, 2008 to November 10, 2008, Plaintiff worked a total of 768.5 hours and received a total compensation for that period of approximately \$19,020, which did not include any pay for overtime hours worked. A detailed statement of the days worked, the hours worked each day, and the overtime pay that should have been paid is attached hereto as **Exhibit C** and incorporated herein by reference.

33. California Labor Code § 1198 provides that it is unlawful to employ persons for longer than the hours set by the Industrial Welfare Commission or under conditions prohibited by the applicable wage orders.

34. At all times relevant herein, Industrial Welfare Commission Wage Order No. 4-2001, which applies to Plaintiff's employment by Infosys, provided that an employee "shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and (b) Double the employee's regular rate of pay for all hours worked in

1 excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the  
2 seventh (7th) consecutive day of work in a workweek. (c) The overtime rate of compensation  
3 required to be paid to a nonexempt full-time salaried employee shall be computed by using the  
4 employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary."

5 35. Under the provisions of the above-referenced Wage Order, Plaintiff should  
6 have received a total of \$40,648 for hours worked during the period from August 24, 2008 to  
7 November 10, 2008. Therefore, for unpaid overtime, Defendant Infosys owes Plaintiff the  
8 sum of \$21,384, representing the difference between the amount of wages owed pursuant to  
9 the Wage Order and the amount actually paid to Plaintiff. Defendant has failed and continues  
10 to fail to pay Plaintiff the amount owed.

11 36. Defendant Infosys's failure to pay Plaintiff the sum of \$21,384, as required by  
12 the applicable Wage Order, violates the provisions of California Labor Code § 1198 and is  
13 therefore unlawful.

14  
15 **COUNT III: CONSTRUCTIVE DISCHARGE IN VIOLATION OF FEHA**  
16 **(Against Defendants Infosys Technologies Limited, Mahesh Prakash Kinbikar,**  
**and Anmol Srivastava)**

17 37. Plaintiff realleges and incorporates by reference each and every allegation  
18 contained in each of the above paragraphs as if fully set forth herein.

19 38. The actions alleged above constituting harassment in violation of Government  
20 Code § 12940(j) caused Plaintiff to be constructively discharged from her employment, in that  
21 Infosys intentionally created and knowingly permitted working conditions set forth above,  
22 which were so intolerable or aggravated at the time of Plaintiff's resignation that a reasonable  
23 employer would have realized that a reasonable person in Plaintiff's position would be  
24 compelled to resign. As a proximate cause of these working conditions, Plaintiff did resign  
25 from her employment on November 11, 2008.

26 39. As a proximate result of Defendants' harassment of Plaintiff, as alleged above,  
27 Plaintiff has been harmed in that Plaintiff has suffered the loss of wages, including money that  
28 Plaintiff would have received if Plaintiff had not been constructively discharged from her



1 position with Defendant Infosys. As a result of such harassment and consequent harm,  
2 Plaintiff has suffered such damages in an amount according to proof.

3 40. As a further proximate result of Defendants' harassment of Plaintiff, as alleged  
4 above, Plaintiff has been harmed in that Plaintiff has suffered the intangible loss of such  
5 employment-related opportunities as experience in the position from which Plaintiff was  
6 constructively discharged. As a result of such harassment and consequent harm, Plaintiff has  
7 suffered such damages in an amount according to proof.

8 41. The above-recited actions of Defendants in constructively discharging Plaintiff  
9 from employment were done with malice, fraud, or oppression, and in reckless disregard of  
10 Plaintiff's rights under the FEHA. Because these acts were carried out in a despicable,  
11 deliberate, and intentional manner, this conduct warrants the assessment of punitive damages  
12 in a sum sufficient to punish and deter future such conduct.

13  
14 **COUNT IV: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**  
**(Against All Defendants)**

15 42. Plaintiff realleges and incorporates by reference each and every allegation  
16 contained in each of the above paragraphs as if fully set forth herein.

17 43. During Plaintiff's employment at Infosys, Defendant Infosys and its agents and  
18 supervisors, including Defendant Mahesh Prakash Kinhikar and Defendant Anmol Srivastava,  
19 engaged in a pattern of conduct designed to humiliate Plaintiff.

20 44. Defendant Infosys, standing in a position of authority over Plaintiff, and  
21 Infosys's agents and supervisors, including Defendant Mahesh Prakash Kinhikar and  
22 Defendant Anmol Srivastava, abusing their positions as supervisors over Plaintiff, acted as set  
23 forth above knowingly and unreasonably with the intent to inflict mental anguish, humiliation,  
24 emotional, and physical distress.

25 45. Even after Plaintiff was forced to resign, Defendant Infosys and Infosys's  
26 agents and supervisors, including Defendants Mahesh Prakash Kinhikar and Prasita Kutty  
27 engaged in a pattern of conduct designed to humiliate Plaintiff, taking actions knowingly and  
28 unreasonably with the intent to inflict mental anguish, humiliation, emotional, and physical

1 distress. For example, Defendant Mahesh Prakash Kinhikar demanded that Plaintiff come to  
2 work even after Plaintiff resigned, and Prasita Kutty insisted on speaking with Plaintiff on  
3 Thanksgiving Day regarding the termination of Plaintiff's employment, and made false  
4 statements about the circumstances surrounding the termination of Plaintiff's employment,  
5 with the intent to inflict mental anguish, humiliation, and emotional and physical distress.

6 46. The conduct of Defendant Infosys and its agents and supervisors had a severe  
7 and traumatic effect on Plaintiff's emotional tranquility. As a proximate result of their acts,  
8 Plaintiff suffered severe emotional distress and anxiety which resulted in inability to sleep  
9 well.

10 47. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered  
11 general damages in an amount according to proof.

12 48. As a further direct and proximate result of Defendants' conduct, Plaintiff was  
13 forced to resign and thereafter unable to work for a period of time, or in the technology sector,  
14 and accordingly, lost wages and earning capacity in an amount according to proof.

15 **COUNT V: BREACH OF IMPLIED COVENANT OF**  
16 **GOOD FAITH AND FAIR DEALING**  
**(Against Defendant Infosys Technologies Limited)**

17 49. Plaintiff realleges and incorporates by reference each and every allegation  
18 contained in each of the above paragraphs as if fully set forth herein.

19 50. Plaintiff was employed by Infosys pursuant to an employment contract. The  
20 contract contained an implied covenant of good faith and fair dealing, which obligated Infosys  
21 to perform the terms and conditions of the agreement fairly and in good faith and to refrain  
22 from doing any act that would prevent or impede Plaintiff from performing any or all of the  
23 conditions of the contract that they agreed to perform, or any act that would deprive Plaintiff  
24 of the benefits of the contract.

25 51. Defendant Infosys breached the implied covenant of good faith and fair dealing  
26 under the employment agreement by the acts set forth above, intentionally, maliciously, and  
27 for reasons extraneous to the contract. Plaintiff's employment terminated not because of any  
28 reasons relating to Plaintiff's performance but because of conditions in the workplace that



1 were so intolerable or aggravated at the time of Plaintiff's resignation that Plaintiff was  
2 compelled to resign.

3 52. As a proximate result of Defendant Infosys's breach of the implied covenant of  
4 good faith and fair dealing, Plaintiff has suffered and continues to suffer losses in earnings  
5 and in earning capacity in an amount according to proof.

6  
7 **COUNT VI: WAITING TIME PENALTIES UNDER LABOR CODE § 203**  
8 **(Against Defendant Infosys Technologies Limited)**

9 53. Plaintiff realleges and incorporates by reference each and every allegation  
10 contained in each of the above paragraphs as if fully set forth herein.

11 54. On November 11, 2008, when Plaintiff was forced to quit, Plaintiff had last  
12 been paid a number of days earlier, and therefore was owed wages for a number of days, as  
13 provided for in Plaintiff's employment contract with Infosys.

14 55. At the time of the termination of Plaintiff's employment, Infosys willfully  
15 failed to pay the above-referenced wages within the 72-hour period required by California  
16 Labor Code § 203, and willfully failed to pay such wages for a number of days thereafter.

17 56. Pursuant to the provisions of California Labor Code § 203, Defendant owes  
18 Plaintiff a penalty in an amount of Plaintiff's daily rate multiplied by the number of days late.

19 57. Pursuant to California Labor Code § 218.5, Plaintiff requests that the Court  
20 award Plaintiff reasonable attorney's fees and costs incurred in this action.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays for judgment as follows:

- 23 a) For compensatory damages in the amount of \$21,384, representing the amount of  
24 unpaid overtime compensation;
- 25 b) For interest on any overtime compensation due from the day such amounts were  
26 due;
- 27 c) For waiting time penalties pursuant to Labor Code § 203 according to proof;
- 28 d) For an award of civil penalties pursuant to Labor Code § 2699;
- e) For reasonable attorney's fees and costs pursuant to Labor Code § 1194(a) and

Labor Code § 218.5;

- f) For back pay, front pay, and other monetary relief according to proof;
- g) For general damages according to proof;
- h) For punitive damages in an amount appropriate to punish Defendant for its wrongful conduct and to set an example for others;
- i) For interest on the sum of damages awarded;
- j) For reasonable attorney's fees and costs, including expert witness fees, pursuant to Government Code Section 12965(b);
- k) For costs of suit herein incurred; and
- l) For such other and further relief as the Court deems proper.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury on all counts.

DATED: December 24, 2009

Respectfully submitted,

THE TIDRICK LAW FIRM

By:



STEVEN G. TIDRICK, SBN 224760

THE TIDRICK LAW FIRM

6114 La Salle Avenue #500

Oakland, California 94611

Telephone: (510) 381-3832

Facsimile: (510) 291-3226

E-mail: sgt@tidricklaw.com

Attorney for Plaintiff  
PROMILA AWASTHI

## Exhibit C

PLD-050

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): —Michelle B. Heverly (SBN 178660) / Blaire A. Cleveland (SBN 255172) Littler Mendelson 50 W. San Fernando Street, 15 <sup>th</sup> Floor San Jose, CA 95113 TELEPHONE NO.: 408-998-4150 FAX NO. (Optional): 408-288-6686 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Infosys Technologies Limited, Anmol Srivavista & Mahesh Prakash Kinshikar		FOR COURT USE ONLY <b>ENDORSED FILED</b> ALAMEDA COUNTY FEB 19 2010 CLERK OF THE SUPERIOR COURT BY ERICA BAKER
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1221 Oak Street MAILING ADDRESS: 1221 Oak Street CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME:		
PLAINTIFF/PETITIONER: Promila Awasthi DEFENDANT/RESPONDENT: Infosys Technologies, Limited, et al.		
<b>GENERAL DENIAL</b>		
CASE NUMBER: RG09486022		
If you want to file a general denial, you <b>MUST</b> use this form if the amount asked for in the complaint or the value of the property involved is \$1,000 or less. You <b>MAY</b> use this form for a general denial if: 1. The complaint is not verified; or 2. The complaint is verified and the case is a limited civil case (the amount in controversy is \$25,000 or less), BUT NOT if the complaint involves a claim for more than \$1,000 that has been assigned to a third party for collection. (See Code of Civil Procedure sections 85–86, 90–100, 431.30, and 431.40.)		

1. DEFENDANTS (name): Infosys Technologies, Limited; Mahesh Prakash Kinshikar; and Prasita Kutty generally deny each and every allegation of plaintiff's complaint.
2. ☒ DEFENDANTS state the following FACTS as separate affirmative defenses to plaintiff's complaint (attach additional pages if necessary):  
 Please see the attached Affirmative Defenses.

**BY FAX**

Date: January 19, 2010

Blaire A. Cleveland

(TYPE OR PRINT NAME)

(SIGNATURE OF DEFENDANT OR ATTORNEY)

If you have a claim for damages or other relief against the plaintiff, the law may require you to state your claim in a special pleading called a cross-complaint or you may lose your right to bring the claim. (See Code of Civil Procedure sections 426.10–426.40.)

The original of this *General Denial* must be filed with the clerk of this court with proof that a copy was served on each plaintiff's attorney and on each plaintiff not represented by an attorney. There are two main ways to serve this *General Denial*: by personal delivery or by mail. It may be served by anyone at least 18 years of age EXCEPT you or any other party to this legal action. Be sure that whoever serves the *General Denial* fills out and signs a proof of service. You may use the applicable Judicial Council form (such as form POS-020, POS-030, or POS-040) for the proof of service.

Page 1 of 1

**PROMILA AWASTHI v. INFOSYS TECHNOLOGIES, INC., et al.**

**Alameda County Superior Court**

**Case No. RG09486022**

**INFOSYS TECHNOLOGIES, LTD.'S AFFIRMATIVE DEFENSES**

AS AND FOR A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH AND EVERY CAUSE OF ACTION SET FORTH IN PLAINTIFF'S COMPLAINT, Defendant Infosys Technologies Limited alleges:

That Plaintiff's Complaint fails to state a claim upon which relief may be granted, including but not limited to any claim for general, special or punitive damages, injunctive relief, or attorneys' fees or costs.

AS AND FOR A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH AND EVERY CAUSE OF ACTION SET FORTH IN PLAINTIFF'S COMPLAINT, Defendant Infosys Technologies Limited alleges:

That the Complaint and each cause of action alleged therein are barred by the applicable statutes of limitations, including, but not limited to California Government Code sections 12960 and 12965, and California Code of Civil Procedure sections 335.1, 337, 339, and 340.

AS AND FOR A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH AND EVERY CAUSE OF ACTION SET FORTH IN PLAINTIFF'S COMPLAINT, Defendant Infosys Technologies Limited alleges:

That each claim for relief contained therein is barred by Plaintiff's failure to timely or properly exhaust her administrative remedies. California Government Code § 12960, etc.

AS AND FOR A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH AND EVERY CAUSE OF ACTION SET FORTH IN PLAINTIFFS' COMPLAINT, Defendant Infosys Technologies Limited alleges:

That some or all of Plaintiff's claims are barred by Plaintiff's consent to and/or voluntary participation in all or some of the acts alleged, or conduct similar thereto.

///

///



1 AS AND FOR A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH  
2 AND EVERY CAUSE OF ACTION SET FORTH IN PLAINTIFFS' COMPLAINT, Defendant  
3 Infosys Technologies Limited alleges:

4 That Plaintiff's Complaint and each of its causes of action are barred because the  
5 employment relationship between Plaintiff and Defendant expressly provided for arbitration of all  
6 disputes resulting from Plaintiff's employment with Defendant, and Plaintiff failed to avail herself of  
7 mandatory arbitration.

8 AS AND FOR A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH  
9 AND EVERY CAUSE OF ACTION SET FORTH IN PLAINTIFFS' COMPLAINT, Defendant  
10 Infosys Technologies Limited alleges:

11 That Plaintiff's Complaint and each of its causes of action are barred because any and  
12 all employment decisions made with regard to Plaintiff were made without malice, in good faith and  
13 motivated by legitimate, non-retaliatory, non-discriminatory reasons and/or as a result of business  
14 necessity.

15 AS AND FOR A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO  
16 EACH CAUSE OF ACTION SET FORTH IN PLAINTIFFS' COMPLAINT, Defendant Infosys  
17 Technologies Limited alleges:

18 That without admitting that any unlawful or wrongful acts occurred, if any of  
19 Defendant Infosys Technologies Limited's agents or employees engaged in any unlawful or  
20 wrongful acts, these alleged acts were outside the scope of their authority, and were not authorized,  
21 ratified or condoned by Defendant Infosys Technologies Limited.

22 AS AND FOR AN EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE TO  
23 EACH CAUSE OF ACTION SET FORTH IN PLAINTIFFS' COMPLAINT, Defendant Infosys  
24 Technologies Limited alleges:

25 That at all times relevant, Defendant Infosys Technologies Limited promulgated an  
26 anti-discrimination and anti-harassment policy and complaint procedure which were communicated  
27 to Plaintiff, and Defendant Infosys Technologies Limited exercised reasonable care to prevent and  
28 correct promptly any inappropriate conduct.

1 AS AND FOR A NINTH, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH  
 2 CAUSE OF ACTION SET FORTH IN PLAINTIFFS' COMPLAINT, Defendant Infosys  
 3 Technologies Limited alleges:

4 That to the extent during the course of this litigation Defendant acquires any evidence  
 5 of wrongdoing by Plaintiff and the wrongdoing would have materially affected the terms and  
 6 conditions of Plaintiff's employment or would have resulted in Plaintiff either being demoted,  
 7 disciplined, or terminated, such after-acquired evidence shall bar Plaintiff's claim on liability or  
 8 damages or shall reduce such claim or damages as provided by law.

9 AS AND FOR A TENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO  
 10 EACH CAUSE OF ACTION SET FORTH IN PLAINTIFFS' COMPLAINT, Defendant Infosys  
 11 Technologies Limited alleges:

12 That to the extent that Plaintiff is seeking mental or emotional distress damages, such  
 13 damages are preempted by the exclusive remedy provisions of the California Workers'  
 14 Compensation Act.

15 AS AND FOR AN ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO  
 16 EACH CAUSE OF ACTION SET FORTH IN PLAINTIFFS' COMPLAINT, Defendant Infosys  
 17 Technologies Limited alleges:

18 That Plaintiff could have, by her diligence, taken action which would have mitigated  
 19 her damages, and she had an affirmative duty to do so, which was breached by Plaintiff's failure to  
 20 find other employment and/or take other action upon the cessation of her employment with  
 21 Defendant Infosys.

22 AS AND FOR A TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO  
 23 EACH CAUSE OF ACTION SET FORTH IN PLAINTIFFS' COMPLAINT, Defendant Infosys  
 24 Technologies Limited alleges:

25 That Plaintiff failed to avail herself of complaint procedures promulgated and  
 26 communicated by Defendant, and if she had availed herself of the complaint procedures, she could  
 27 have reasonably avoided any allegedly adverse consequences.

28 ///

1 AS AND FOR A THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE  
2 TO EACH CAUSE OF ACTION SET FORTH IN PLAINTIFFS' COMPLAINT, Defendant Infosys  
3 Technologies Limited alleges:

4 That all damages Plaintiff has suffered are wholly or in part the result of her own  
5 actions, or the actions of other individuals, not the answering Defendant.

6 AS AND FOR A FOURTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE  
7 TO EACH CAUSE OF ACTION SET FORTH IN PLAINTIFFS' COMPLAINT, Defendant Infosys  
8 Technologies Limited alleges:

9 That each and every act done or statement made by Defendant with regard to, or in  
10 any way related to, Plaintiff was privileged as a good faith assertion of Defendant's legal rights..

11 AS AND FOR A FIFTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO  
12 EACH CAUSE OF ACTION SET FORTH IN PLAINTIFFS' COMPLAINT, Defendant Infosys  
13 Technologies Limited alleges:

14 That Defendant Infosys acted fairly and in good faith at all times and attempted to  
15 abide by, honor and act in accordance with applicable state wage and labor laws.

16 AS AND FOR A SIXTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO  
17 EACH CAUSE OF ACTION SET FORTH IN PLAINTIFFS' COMPLAINT, Defendant Infosys  
18 Technologies Limited alleges:

19 That Plaintiff's claims for alleged failure to pay overtime are barred, as Plaintiff was  
20 properly classified as exempt from overtime and minimum wage under the professional,  
21 administrative, executive and/or computer professional exemptions.

22 AS AND FOR A SEVENTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE  
23 TO EACH CAUSE OF ACTION SET FORTH IN PLAINTIFFS' COMPLAINT, Defendant Infosys  
24 Technologies Limited alleges:

25 That any violation of the Labor Code or an order of the Industrial Welfare  
26 Commission was an act or omission made in good faith and Defendant had reasonable grounds for  
27 believing that the act or omission was not a violation of the Labor Code or any order of the Industrial  
28 Welfare Commission.

1 AS AND FOR AN EIGHTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE  
 2 TO EACH CAUSE OF ACTION SET FORTH IN PLAINTIFFS' COMPLAINT, Defendant Infosys  
 3 Technologies Limited alleges:

4 That Plaintiff's work conditions were not so intolerable or aggravated at the time of  
 5 Plaintiff's resignation that a reasonable employer would have realized that a reasonable person in  
 6 Plaintiff's position would be compelled to resign.

7 AS AND FOR AN NINETEENTH, SEPARATE AND AFFIRMATIVE DEFENSE  
 8 TO EACH CAUSE OF ACTION SET FORTH IN PLAINTIFFS' COMPLAINT, Defendant Infosys  
 9 Technologies Limited alleges:

10 That Plaintiff is barred in equity from recovering on her Complaint, or on any claim  
 11 contained therein, under the doctrine of unclean hands.

12 AS AND FOR A TWENTIETH, SEPARATE AND AFFIRMATIVE DEFENSE TO  
 13 EACH CAUSE OF ACTION SET FORTH IN PLAINTIFF'S COMPLAINT, Defendant Infosys  
 14 Technologies Limited alleges:

15 That the contract alleged in the Complaint fails for lack of consideration.

16 AS AND FOR A TWENTY-FIRST, SEPARATE AND AFFIRMATIVE DEFENSE  
 17 TO EACH CAUSE OF ACTION SET FORTH IN PLAINTIFF'S COMPLAINT, Defendant Infosys  
 18 Technologies Limited alleges:

19 That the contract alleged in the Complaint fails for lack of mutual assent.

20 AS AND FOR A TWENTY-SECOND, SEPARATE AND AFFIRMATIVE  
 21 DEFENSE TO EACH CAUSE OF ACTION SET FORTH IN PLAINTIFF'S COMPLAINT,  
 22 Defendant Infosys Technologies Limited alleges:

23 That the claims contained in the Complaint are barred by the doctrine of laches.

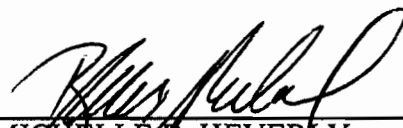
24  
 25 Defendant Infosys does not presently know all facts respecting the conduct of  
 26 Plaintiff sufficient to state all affirmative defenses at this time. Defendant Infosys reserves the right  
 27 to amend this Answer should it later discover facts demonstrating the existence of additional  
 28 affirmative defenses.



WHEREFORE, Defendant Infosys seeks judgment against Plaintiff as follows:

1. For an order dismissing Plaintiff's claims with prejudice, and entering judgment in favor of Defendants and against Plaintiff;
2. For all reasonable costs and attorneys' fees incurred by Defendant in connection with the defense of this matter; and
3. For such other and further relief as the Court in the exercise of its discretion deems just and proper.

Dated: February 19, 2010

  
MICHELLE B. HEVERLY  
BLAIRE A. CLEVELAND  
LITTLER MENDELSON  
A Professional Corporation  
Attorneys for Defendants  
INFOSYS TECHNOLOGIES LIMITED,  
MAHESH PRAKASH KINHIKAR, AND  
PRASITA KUTTY



**PROMILA AWASTHI v. INFOSYS TECHNOLOGIES, INC., et al.**

**Alameda County Superior Court**

**Case No. RG09486022**

**MAHESH PRAKASH KINHNIKAR'S AFFIRMATIVE DEFENSES**

AS AND FOR A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH AND EVERY CAUSE OF ACTION SET FORTH IN PLAINTIFF'S COMPLAINT, Defendant Mahesh Prakash Kinhikar alleges:

That Plaintiff's Complaint fails to state a claim upon which relief may be granted, including but not limited to any claim for general, special or punitive damages, injunctive relief, or attorneys' fees or costs.

AS AND FOR A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH AND EVERY CAUSE OF ACTION SET FORTH IN PLAINTIFF'S COMPLAINT, Defendant Mahesh Prakash Kinhikar alleges:

That the Complaint and each cause of action alleged therein are barred by the applicable statutes of limitations, including, but not limited to California Government Code sections 12960 and 12965, and California Code of Civil Procedure sections 335.1, 337, 339, and 340.

AS AND FOR A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH AND EVERY CAUSE OF ACTION SET FORTH IN PLAINTIFF'S COMPLAINT, Defendant Mahesh Prakash Kinhikar alleges:

That each claim for relief contained therein is barred by Plaintiff's failure to timely or properly exhaust her administrative remedies. California Government Code § 12960, etc.

AS AND FOR A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH AND EVERY CAUSE OF ACTION SET FORTH IN PLAINTIFF'S COMPLAINT, Defendant Mahesh Prakash Kinhikar alleges:

That some or all of Plaintiff's claims are barred by Plaintiff's consent to and/or voluntary participation in all or some of the acts alleged, or conduct similar thereto.

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1 AS AND FOR A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH  
 2 AND EVERY CAUSE OF ACTION SET FORTH IN PLAINTIFF'S COMPLAINT, Defendant  
 3 Mahesh Prakash Kinhikar alleges:

4 That Plaintiff's Complaint and each of its causes of action are barred because the  
 5 employment relationship between Plaintiff and Defendant expressly provided for arbitration of all  
 6 disputes resulting from Plaintiff's employment with Defendant, and Plaintiff failed to avail herself of  
 7 mandatory arbitration.

8 AS AND FOR A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH  
 9 AND EVERY CAUSE OF ACTION SET FORTH IN PLAINTIFF'S COMPLAINT, Defendant  
 10 Mahesh Prakash Kinhikar alleges:

11 That Plaintiff's Complaint and each of its causes of action are barred because any and  
 12 all employment decisions made with regard to Plaintiff were made without malice, in good faith and  
 13 motivated by legitimate, non-retaliatory, non-discriminatory reasons and/or as a result of business  
 14 necessity.

15 AS AND FOR A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO  
 16 EACH CAUSE OF ACTION SET FORTH IN PLAINTIFF'S COMPLAINT, Defendant Mahesh  
 17 Prakash Kinhikar alleges:

18 That to the extent that Plaintiff is seeking mental or emotional distress damages, such  
 19 damages are preempted by the exclusive remedy provisions of the California Workers'  
 20 Compensation Act.

21 AS AND FOR AN EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE TO  
 22 EACH CAUSE OF ACTION SET FORTH IN PLAINTIFF'S COMPLAINT, Defendant Infosys  
 23 Mahesh Prakash Kinhikar alleges:

24 That Plaintiff could have, by her diligence, taken action which would have mitigated  
 25 her damages, and she had an affirmative duty to do so, which was breached by Plaintiff's failure to  
 26 find other employment and/or take other action upon the cessation of her employment with Infosys.

27 ///

28 ///

1 AS AND FOR A NINTH, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH  
 2 CAUSE OF ACTION SET FORTH IN PLAINTIFF'S COMPLAINT, Defendant Mahesh Prakash  
 3 Kinhikar alleges:

4 That Plaintiff failed to avail herself of complaint procedures promulgated and  
 5 communicated by Infosys, and if she had availed herself of the complaint procedures, she could have  
 6 reasonably avoided any allegedly adverse consequences.

7 AS AND FOR A TENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO  
 8 EACH CAUSE OF ACTION SET FORTH IN PLAINTIFF'S COMPLAINT, Defendant Mahesh  
 9 Prakash Kinhikar alleges:

10 That all damages Plaintiff has suffered are wholly or in part the result of her own  
 11 actions, or the actions of other individuals not the answering Defendant.

12 AS AND FOR AN ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO  
 13 EACH CAUSE OF ACTION SET FORTH IN PLAINTIFF'S COMPLAINT, Defendant Mahesh  
 14 Prakash Kinhikar alleges:

15 That each and every act done or statement made by Defendant with regard to, or in  
 16 any way related to, Plaintiff was privileged as a good faith assertion of Defendant's legal rights.

17 AS AND FOR A TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO  
 18 EACH CAUSE OF ACTION SET FORTH IN PLAINTIFF'S COMPLAINT, Defendant Mahesh  
 19 Prakash Kinhikar alleges:

20 That at all times relevant, Defendant Infosys Technologies Limited promulgated an  
 21 anti-discrimination and anti-harassment policy and complaint procedure which were communicated  
 22 to Plaintiff, and Defendant Infosys Technologies Limited exercised reasonable care to prevent and  
 23 correct promptly any inappropriate conduct.

24 AS AND FOR A THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE  
 25 TO EACH CAUSE OF ACTION SET FORTH IN PLAINTIFFS' COMPLAINT, Defendant  
 26 Mahesh Prakash Kinhikar alleges:

27 That Plaintiff's work conditions were not so intolerable or aggravated at the time of  
 28 Plaintiff's resignation that a reasonable employer would have realized that a reasonable person in

1 Plaintiff's position would be compelled to resign.

2 AS AND FOR A FOURTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE  
3 TO EACH CAUSE OF ACTION SET FORTH IN PLAINTIFFS' COMPLAINT, Defendant  
4 Mahesh Prakash Kinhikar alleges:

5 That the actions about which Plaintiff complains were ordinary workplace  
6 interactions, and therefore cannot form the basis of individual liability for this Defendant.

7  
8 Defendant Mahesh Prakash Kinhikar does not presently know all facts respecting the  
9 conduct of Plaintiff sufficient to state all affirmative defenses at this time. Defendant Mahesh  
10 Prakash Kinhikar reserves the right to amend this Answer should he later discover facts  
11 demonstrating the existence of additional affirmative defenses.


12 WHEREFORE, Defendant Mahesh Prakash Kinhikar seeks judgment against Plaintiff  
13 as follows:

14 1. For an order dismissing Plaintiff's claims with prejudice, and entering  
15 judgment in favor of Defendants and against Plaintiff;

16 2. For all reasonable costs and attorneys' fees incurred by Defendant in  
17 connection with the defense of this matter; and

18 3. For such other and further relief as the Court in the exercise of its discretion  
19 deems just and proper.

20 Dated: February 19, 2010

21  
22   
23 MICHELLE B. HEVERLY  
24 BLAIRE A. CLEVELAND  
25 LITTLER MENDELSON  
26 A Professional Corporation  
27 Attorneys for Defendants  
28 INFOSYS TECHNOLOGIES LIMITED,  
MAHESH PRAKASH KINHIKAR, AND  
PRASITA KUTTY



**PROMILA AWASTHI v. INFOSYS TECHNOLOGIES, INC., et al.**

**Alameda County Superior Court**

**Case No. RG09486022**

**PRASITA KUTTY'S AFFIRMATIVE DEFENSES**

AS AND FOR A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH AND EVERY CAUSE OF ACTION SET FORTH IN PLAINTIFF'S COMPLAINT, Defendant Prasita Kutty alleges:

That Plaintiff's Complaint fails to state a claim upon which relief may be granted, including but not limited to any claim for general, special or punitive damages, injunctive relief, or attorneys' fees or costs.

AS AND FOR A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH AND EVERY CAUSE OF ACTION SET FORTH IN PLAINTIFF'S COMPLAINT, Defendant Prasita Kutty alleges:

That the Complaint and each cause of action alleged therein are barred by the applicable statutes of limitations, including, but not limited to California Government Code sections 12960 and 12965, and California Code of Civil Procedure sections 335.1, 337, 339, and 340.

AS AND FOR A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH AND EVERY CAUSE OF ACTION SET FORTH IN PLAINTIFF'S COMPLAINT, Defendant Prasita Kutty alleges:

That each claim for relief contained therein is barred by Plaintiff's failure to timely or properly exhaust her administrative remedies. California Government Code § 12960, etc.

AS AND FOR A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH AND EVERY CAUSE OF ACTION SET FORTH IN PLAINTIFF'S COMPLAINT, Defendant Prasita Kutty alleges:

That some or all of Plaintiff's claims are barred by Plaintiff's consent to and/or voluntary participation in all or some of the acts alleged, or conduct similar thereto.

///

///



1 AS AND FOR A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH  
 2 AND EVERY CAUSE OF ACTION SET FORTH IN PLAINTIFF'S COMPLAINT, Defendant  
 3 Prasita Kutty alleges:

4 That Plaintiff's Complaint and each of its causes of action are barred because the  
 5 employment relationship between Plaintiff and Defendant expressly provided for arbitration of all  
 6 disputes resulting from Plaintiff's employment with Defendant, and Plaintiff failed to avail herself of  
 7 mandatory arbitration.

8 AS AND FOR A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH  
 9 AND EVERY CAUSE OF ACTION SET FORTH IN PLAINTIFF'S COMPLAINT, Defendant  
 10 Prasita Kutty alleges:

11 That Plaintiff's Complaint and each of its causes of action are barred because any and  
 12 all employment decisions made with regard to Plaintiff were made without malice, in good faith and  
 13 motivated by legitimate, non-retaliatory, non-discriminatory reasons and/or as a result of business  
 14 necessity.

15 AS AND FOR A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO  
 16 EACH CAUSE OF ACTION SET FORTH IN PLAINTIFF'S COMPLAINT, Defendant Prasita  
 17 Kutty alleges:

18 That to the extent that Plaintiff is seeking mental or emotional distress damages, such  
 19 damages are preempted by the exclusive remedy provisions of the California Workers'  
 20 Compensation Act.

21 AS AND FOR AN EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE TO  
 22 EACH CAUSE OF ACTION SET FORTH IN PLAINTIFF'S COMPLAINT, Defendant Infosys  
 23 Prasita Kutty alleges:

24 That Plaintiff could have, by her diligence, taken action which would have mitigated  
 25 her damages, and she had an affirmative duty to do so, which was breached by Plaintiff's failure to  
 26 find other employment and/or take other action upon the cessation of her employment with Infosys.

27 ///

28 ///

1 AS AND FOR A NINTH, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH  
 2 CAUSE OF ACTION SET FORTH IN PLAINTIFF'S COMPLAINT, Defendant Prasita Kutty  
 3 alleges:

4 That Plaintiff failed to avail herself of complaint procedures promulgated and  
 5 communicated by Infosys, and if she had availed herself of the complaint procedures, she could have  
 6 reasonably avoided any allegedly adverse consequences.

7 AS AND FOR A TENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO  
 8 EACH CAUSE OF ACTION SET FORTH IN PLAINTIFF'S COMPLAINT, Defendant Prasita  
 9 Kutty alleges:

10 That all damages Plaintiff has suffered are wholly or in part the result of her own  
 11 actions, or the actions of other individuals not the answering Defendant.

12 AS AND FOR AN ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO  
 13 EACH CAUSE OF ACTION SET FORTH IN PLAINTIFF'S COMPLAINT, Defendant Prasita  
 14 Kutty alleges:

15 That each and every act done or statement made by Defendant with regard to, or in  
 16 any way related to, Plaintiff was privileged as a good faith assertion of Defendant's legal rights.

17 AS AND FOR A TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO  
 18 EACH CAUSE OF ACTION SET FORTH IN PLAINTIFF'S COMPLAINT, Defendant Prasita  
 19 Kutty alleges:

20 That at all times relevant, Defendant Infosys Technologies Limited promulgated an  
 21 anti-discrimination and anti-harassment policy and complaint procedure which were communicated  
 22 to Plaintiff, and Defendant Infosys Technologies Limited exercised reasonable care to prevent and  
 23 correct promptly any inappropriate conduct.

24 AS AND FOR A THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE  
 25 TO EACH CAUSE OF ACTION SET FORTH IN PLAINTIFFS' COMPLAINT, Defendant Prasita  
 26 Kutty alleges:

27 That Plaintiff's work conditions were not so intolerable or aggravated at the time of  
 28 Plaintiff's resignation that a reasonable employer would have realized that a reasonable person in

1 Plaintiff's position would be compelled to resign.

2 AS AND FOR A FOURTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE  
3 TO EACH CAUSE OF ACTION SET FORTH IN PLAINTIFFS' COMPLAINT, Defendant Prasita  
4 Kutty alleges:

5 That the actions about which Plaintiff complains were ordinary workplace  
6 interactions, and therefore cannot form the basis of individual liability for this Defendant.

7  
8 Defendant Prasita Kutty does not presently know all facts respecting the conduct of  
9 Plaintiff sufficient to state all affirmative defenses at this time. Defendant Prasita Kutty reserves the  
10 right to amend this Answer should she later discover facts demonstrating the existence of additional  
11 affirmative defenses.


12 WHEREFORE, Defendant Prasita Kutty seeks judgment against Plaintiff as follows:

13 1. For an order dismissing Plaintiff's claims with prejudice, and entering  
14 judgment in favor of Defendants and against Plaintiff;

15 2. For all reasonable costs and attorneys' fees incurred by Defendant in  
16 connection with the defense of this matter; and

17 3. For such other and further relief as the Court in the exercise of its discretion  
18 deems just and proper.

19 Dated: February 19, 2010

20  
21   
22 MICHELLE B. HEVERLY  
23 BLAIRE A. CLEVELAND  
24 LITTLER MENDELSON  
25 A Professional Corporation  
26 Attorneys for Defendants  
27 INFOSYS TECHNOLOGIES LIMITED,  
28 MAHESH PRAKASH KINHIKAR, AND  
PRASITA KUTTY

**PROOF OF SERVICE**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 50 W. San Fernando, 15th Floor, San Jose, California 95113.2303. On February 19, 2010, I served the within document(s):

**GENERAL DENIAL AND AFFIRMATIVE DEFENSES**

☒ by facsimile transmission on that date. This document was transmitted by using a facsimile machine that complies with California Rules of Court Rule 2003(3), telephone number 408.288.5686. The names and facsimile numbers of the person(s) served are as set forth below.

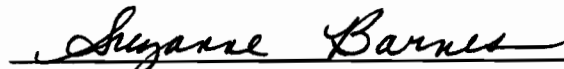
☒ by placing a true copy of the document(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at San Jose, California addressed as set forth below.

Steven G. Tidrick  
The Tidrick Law Firm  
6114 La Salle Avenue, #500  
Oakland, CA 94611

Telephone: (510) 381-3832  
Facsimile: (510) 291-3226  
sgt@tidricklaw.com

I am readily familiar with the firm's practice of collection and processing correspondence for mailing and for shipping via overnight delivery service. Under that practice it would be deposited with the U.S. Postal Service or if an overnight delivery service shipment, deposited in an overnight delivery service pick-up box or office on the same day with postage or fees thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 19, 2010, at San Jose, California.

  
Suzanne Barnes



## Exhibit D

CIV-050

**- DO NOT FILE WITH THE COURT -****- UNLESS YOU ARE APPLYING FOR A DEFAULT JUDGMENT UNDER CODE OF CIVIL PROCEDURE § 585 -**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): <b>STEVEN G. TIDRICK, SBN 224760</b> <b>THE TIDRICK LAW FIRM</b> <b>6114 La Salle Avenue #500</b> <b>Oakland, California 94611</b> ATTORNEY FOR (name): <b>Promila Awasthi</b>		TELEPHONE NO.: <b>(510) 381-3832</b>	FOR COURT USE ONLY          CASE NUMBER: <b>RG09486022</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA</b> STREET ADDRESS: <b>1221 Oak Street</b> MAILING ADDRESS: <b>Same</b> CITY AND ZIP CODE: <b>Oakland 94612</b> BRANCH NAME: <b>Administration Building</b>			
PLAINTIFF: <b>Promila Awasthi</b> DEFENDANT: <b>Infosys Technologies Limited et al.</b>			
<b>STATEMENT OF DAMAGES</b> <b>(Personal Injury or Wrongful Death)</b>			

To (name of one defendant only): **Infosys Technologies Limited**  
 Plaintiff (name of one plaintiff only): **Promila Awasthi**  
 seeks damages in the above-entitled action, as follows:

- |   | AMOUNT              |
|---|---------------------|
| <b>1. General damages</b>   |                     |
| a. <input checked="" type="checkbox"/> Pain, suffering, and inconvenience .....   | \$ *                |
| b. <input checked="" type="checkbox"/> Emotional distress .....   | \$ *                |
| c. <input type="checkbox"/> Loss of consortium .....  | \$                  |
| d. <input type="checkbox"/> Loss of society and companionship (wrongful death actions only) .....   | \$                  |
| e. <input type="checkbox"/> Other (specify) .....   | \$                  |
| f. <input type="checkbox"/> Other (specify) .....   | \$                  |
| g. <input type="checkbox"/> Continued on Attachment 1.g.  |                     |
| <b>2. Special damages</b>   |                     |
| a. <input checked="" type="checkbox"/> Medical expenses (to date) .....   | \$ *                |
| b. <input checked="" type="checkbox"/> Future medical expenses (present value) .....  | \$ *                |
| c. <input checked="" type="checkbox"/> Loss of earnings (to date) .....   | \$ *                |
| d. <input checked="" type="checkbox"/> Loss of future earning capacity (present value) .....  | \$ *                |
| e. <input type="checkbox"/> Property damage .....   | \$                  |
| f. <input type="checkbox"/> Funeral expenses (wrongful death actions only) .....  | \$                  |
| g. <input type="checkbox"/> Future contributions (present value) (wrongful death actions only) .....  | \$                  |
| h. <input type="checkbox"/> Value of personal service, advice, or training (wrongful death actions only) .....  | \$                  |
| i. <input checked="" type="checkbox"/> Other (specify) <u>unpaid overtime</u> .....   | \$ <b>21,384.00</b> |
| j. <input checked="" type="checkbox"/> Other (specify) <u>waiting time penalties</u> .....  | \$ *                |
| k. <input checked="" type="checkbox"/> Continued on Attachment 2.k.   |                     |
| <b>3. <input checked="" type="checkbox"/> Punitive damages:</b> Plaintiff reserves the right to seek punitive damages in the amount of (specify).. \$ * |                     |
| when pursuing a judgment in the suit filed against you.   |                     |

Date: **February 1, 2010****STEVEN G. TIDRICK, SBN 224760**

(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)

(Proof of service on reverse)

Page 1 of 2

<b>SHORT TITLE:</b> Promila Awasthi v. Infosys Technologies Limited et al.	<b>CASE NUMBER:</b> RG09486022
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ATTACHMENT (Number): 2.kPage 1 of 1

(This Attachment may be used with any Judicial Council form.)

(Add pages as required)

2. Special damages (continued)

AMOUNT

2.k. Attorneys fees and costs..... \*

\* Plaintiff claims such damages but has not yet completed her investigation of the facts relating to this action, has not yet reviewed all materials relating to this action, and has not yet interviewed or deposed all witnesses in this action. On December 23, 2009, Plaintiff noticed the depositions of several employees of Defendant Infosys Technologies Limited ("Infosys") who may have information relevant to some categories of damages, but Infosys's counsel declined to produce them for depositions as noticed. Infosys's counsel stated: "Our clients are away for the holidays until January 4, 2010. After that time we will confer with our clients and get back to you regarding both the proposed dates and places of the depositions." To date, Infosys's counsel has not yet produced the individuals for depositions or provided the promised information on when and where they may be deposed. Moreover, Plaintiff anticipates that some categories of damages will be the subject of expert testimony. Accordingly, Plaintiff reserves the right to amend and/or supplement her Statement of Damages.

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

1 STEVEN G. TIDRICK, SBN 224760  
2 THE TIDRICK LAW FIRM  
3 6114 La Salle Avenue #500  
4 Oakland, California 94611  
5 Telephone: (510) 381-3832  
6 Facsimile: (510) 291-3226  
7 E-mail: sgt@tidricklaw.com

8 Attorney for Plaintiff  
9 PROMILA AWASTHI

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF ALAMEDA  
12 UNLIMITED JURISDICTION

13 PROMILA AWASTHI,

14 Plaintiff,

15 v.

16 INFOSYS TECHNOLOGIES LIMITED,  
17 a foreign corporation; MAHESH PRAKASH  
18 KINHIKAR; ANMOL SRIVASTAVA;  
19 and DOES 1-20,

20 Defendants.

Civil Case Number: RG09486022

ASSIGNED FOR ALL PURPOSES TO  
JUDGE GAIL BREWSTER BEREOLA  
DEPARTMENT 19

**PROOF OF SERVICE**



I, the undersigned, declare as follows:

I am employed in the County of Alameda, State of California; I am over the age of eighteen and not a party to the within action; my business address is 6114 La Salle Avenue #500, Oakland, California, 94611, in said County and State.

On February 1, 2010, I served the foregoing document(s), described as

**STATEMENT OF DAMAGES**

**BY MAIL TO:**

Infosys Technologies Limited  
c/o C T Corporation System  
818 West Seventh Street  
Los Angeles, CA 90017

Michelle Heverly, Esq.  
Blair Cleveland, Esq.  
Littler Mendelson P.C.  
50 West San Fernando St., 15th Floor  
San Jose, CA 95113-2434  
Facsimile: (408) 998-4150

☒ **BY MAIL:** I placed such document(s) in a sealed envelope addressed as indicated above, on the above-mentioned date. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, an envelope containing the foregoing document would be deposited with the U.S. Postal Service with postage thereon fully prepaid, at Oakland, California, on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **BY PERSONAL DELIVERY:** I caused such document(s) to be delivered by hand in sealed envelope(s) addressed to the address(es) indicated.

☐ **BY FACSIMILE:** From facsimile machine telephone number (510) 291-3226, on the above-mentioned date, I served such document(s) by facsimile transmission to the person(s) at the number(s) indicated.

1 ☐ BY FEDERAL EXPRESS NEXT DAY AIR: I placed such document(s) in a sealed  
2 envelope addressed as indicated above, on the above-mentioned date. I am familiar  
3 with the firm's practice of collection and processing correspondence for delivery by  
4 Federal Express. Pursuant to that practice, envelopes placed for collection at  
5 designated locations during designated hours are delivered to Federal Express with a  
fully completed airbill, under which all delivery charges are paid by The Tidrick Law  
Firm, that same day in the ordinary course of business.

6 ☒ (STATE) I declare that I am employed in the office of a member of the Bar of  
7 this Court at whose direction the service was made. I declare under  
8 penalty of perjury under the laws of the State of California that the  
above is true and correct and that the foregoing document(s) were  
printed on recycled paper.

9 ☐ (FEDERAL) I declare that I am employed in the office of a member of the Bar of  
10 this Court at whose direction the service was made. I declare under  
11 penalty of perjury under the laws of the United States of America that  
the above is true and correct.

12 Executed on February 1, 2010, at Oakland, California

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STEVEN G. TIDRICK (SBN 224760)

## Exhibit E

From: Steve Tidrick [mailto:sgt@tidricklaw.com]  
Sent: Thursday, February 11, 2010 2:33 PM  
To: Heverly, Michelle B.  
Cc: Cleveland, Blaire A.  
Subject: RE: Awasthi v. Infosys Technologies Limited et al., RG09486022

Michelle:

We will serve an amended statement of damages. In the meantime, we stipulate that Plaintiff claims damages significantly in excess of \$75,000, which may or not be a relevant benchmark in this matter.

Very truly yours,

Steven G. Tidrick, Esq.  
The Tidrick Law Firm  
510-381-3832 (phone)  
510-291-3226 (fax)  
sgt@tidricklaw.com  
www.tidricklaw.com

-----Original Message-----

From: Heverly, Michelle B. [mailto:MHeverly@littler.com]  
Sent: Tuesday, February 09, 2010 9:06 AM  
To: Steve Tidrick  
Cc: Cleveland, Blaire A.  
Subject: Awasthi v. Infosys Technologies Limited et al., RG09486022

Steve -

Thank you for responding to our request for statement of damages. Unfortunately, however, the statement is woefully incomplete, as it does not identify any damages other than the overtime amounts claimed. I understand that you may not be able to provide a precise estimate at this time, and further understand that you may have to amend at a later date, but you should be able to estimate the amount of lost wages that your client has from the time of her termination until the date of the statement. Likewise, you should be able to identify the amount of attorneys' fees claimed to date and the amount of medical expenses incurred by your client as of the date of the statement.

Please revise the statement of damages as soon as possible to include all items currently ascertainable. And, in the meantime, can you confirm whether your client has mitigated her damages in any way? We are trying to ascertain the value of the case and it would certainly make a difference to know whether she is still unemployed, whether she has fully mitigated (and as of what date) or whether she has only partially mitigated.

Thanks for your continued professionalism.

Michelle

Michelle Heverly, Shareholder  
408.795.3406 direct 408.981.1194 mobile 408.288.5686 fax  
mheverly@littler.com



50 West San Fernando Street, 15th Floor | San Jose, CA 95113-2434

Littler Mendelson | littler.com  
Employment & Labor Law Solutions Worldwide

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To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this document (including any attachments)

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Littler Mendelson, P.C.  
<http://www.littler.com>